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ABSTRACT

The digest is organized in the following sections: (1) Employment and Re-Employment; (2) Employee Classification; (3) Salaries; (4) Teachers' Duties, Rights and Evaluation; (5) Leaves of Absence; (6) Dismissal/Demotion Notice Dates; (7) Revocation of Credentials; (8) Dismissals, Layoffs, Suspensions, Resignation; (9) Personnel Files; (10) Administrators; and (11) Employees' Rights in Reorganization of Special Education Programs. At the end of each subtopic within the above sections are related Education Code Sections given in parentheses followed by the related court cases represented by numbers that correspond with "Footnotes" at the end of the document. The Education Code Sections and court cases included in the publication are in summary form. Marginal notes are included and an outline of the marginal notes follows the table of contents. An index of California Education Code Section numbers is provided following the footnotes. Readers are advised that the publication is intended for reference only and should not be used as a substitute for the full text of the Education Code or court cases that have been cited, or as a substitute for legal counsel. (MLF)

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INTRODUCTION

This publication is sponsored by ACSA State Personnel Administration Committee. The first edition came out in the Fall of 1980. The Committee found that it was well-received and widely used. In order to keep the material as up-to-date as possible, it has been periodically revised.

With a view to clarify existing Education Code Sections, the related court cases have been included. The court cases have been arranged in an alphabetical order and are listed under "Footnotes" at the end. At the end of each sub-topic the related Education Code Sections are given in parentheses, and following these are the related court cases represented by number which correspond with "Footnotes" at the end. The Education Code Sections and court cases included in the publication are in summary form to provide ease of reference. Marginal notes have been included for the convenience of users. An index of California Education Code Sections has also been included this time at the end.

Since this publication is intended for use as reference only it should not be used as a substitute for the full text of the Education Code or court cases which have been cited. It should also be noted that the laws cited here are selective and therefore not purported to be a compilation of all laws for certificated personnel.

This publication is also not intended as a substitute for legal counsel. Law is dynamic in that there is constant change in statutes and interpretation of those statutes by case law. Each case is interpreted and argued on its own merits; each case is subject to varying legal opinion and interpretation.

Finally, the Association of California School Administrators makes no representation that an individual Education Code Section or case cited may not have been deleted, modified, or superceded at the time of publication.

Since future revisions are contemplated, your comments and suggestions are welcome and should be sent to Raj Prasad, Assistant Superintendent for Personnel and Planning, San Mateo City School District, P.O. Box K, San Mateo, CA 94402, phone 415/349-9922, Ext. 470.

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I. Employment and Re-Employment

A. Reimbursement for Candidiate Expenses

Interview Expenses

- Whenever any person is requested by a school district to travel to the headquarters of such district to be interviewed prior to possible employment, the district MAY reimburse such candidate for *expenses* necessarily incurred in *traveling* from his place of *residence* to the place of *interview* or examination. (Ed.C. #44016) (126)

B. Conditions of Employment — Documents

Military Service Documents

- The governing board of a school district SHALL, as a condition to employment, require an applicant for a position requiring certification qualification to furnish a *statement* of his *military service* and, if available, a copy of the *discharge* or release from service. If not available, other suitable evidence of the conditions under which his military service was terminated may be accepted. (Ed.C. #44838)

Medical Certificate for Employment

- When employing in a certificated position a person who has not previously been employed in a certificated position in this state, the school district or county superintendent SHALL *require a medical certificate* in such form as shall be prescribed by the State Board of Education showing that the applicant is *free from any disabling disease* unfitting the applicant to instruct or associate with children. (Ed.C. #44839)

- The medical certificate SHALL be *submitted* directly to the governing board or county superintendent *by a physician or surgeon* licensed under the Business and Professions Code, or a commissioned medical officer. (Ed.C. #44839)

- The medical examination SHALL have been *conducted not more than six months before the submission* of the certificate and SHALL be *at the expense of the applicant*. (Ed.C. #44839)

- Any governing board or county superintendent MAY *offer a contract subject to submission* of the required medical certificate. (Ed.C. #44839)

- The medical certificate SHALL become a part of the *personnel record* of the employee and SHALL be open to the employee or his designee. (Ed.C. #44839)

Periodic Medical Examination of Employees

- The governing board or county superintendent MAY *require* certificated employees to undergo a *periodic medical examination* by a physician licensed under the Business and Professions Code or a commissioned medical officer, to determine that the employee is *free from* any *communicable disease* unfitting

him to instruct or associate with children. This examination SHALL be *at the expense of the school district or county superintendent.* (Ed.C. #44839)

- The periodic medical examination certificate SHALL become a part of the *personnel record* of the employee and SHALL be open to the employee or his designee. (Ed.C. #44839)

- The State Board of Education SHALL *adopt rules* and regulations relating to the implementation and administration of this section. (Ed.C. #44839)

Medical Certificate from a Retirant

- When a school district or county superintendent of schools wishes to employ a *retirant* who has not been previously employed as a retirant, the district or superintendent SHALL require, as a condition or employment, a *medical certificate* in such form as shall be prescribed by the State Board of Education, showing that the retirant is *free from* any *disabling disease* unfitting him or her to instruct or associate with children. (Ed.C. #44839.5)

- A *medical examination,* conducted not more than six months prior to submission of the certificate at the expense of the retirant, SHALL be required for completion of the certificate. (Ed.C. #44839.5)

- The medical certificate SHALL become part of the *personnel record* of the employee, and SHALL be open to the employee or his designee. (Ed.C. #44839.5)

Periodic Medical Examination of a Retirant

- The school district or superintendent MAY require a *periodic medical examination* at the expense of the district or superintendent, to determine that the retirant is *free from* any *communicable disease* unfitting him or her to instruct or associate with children (Ed.C. #44839.5)

- The medical certificate SHALL become part of the *personnel record* of the retirant, and SHALL be open to the employee or his designee. (Ed.C. #44839.5)

- The State Board of Education SHALL *adopt rules* and regulations relating to the implementation and administration of this section. (Ed.C. #44839.5)

C. Issuing of Contracts for Following Year

March 15 Notice

- Persons *presently in certificated positions* may be *elected* for the next ensuing school year on or after the *15th day of March,* and each person so elected shall be *deemed re-elected* from year to year, except as provided in Ed.C #35043 (joint appointment of principals), #44831-44891 (Commission on Teacher Credentialing), #44893-44906, and #44908-44919. (Ed.C. #44840) (61, 99, 26, 98)

December 31 Election

- Persons *not presently employed* in the school district MAY be *elected* for the next ensuing school year, at any time after the *31st day fo December* to a position requiring certification qualifications. (Ed.C. #44840) (61, 99, 26, 98)

D. Acceptance or Denial of Contracts

Acceptance Period for Non-Tenured Employees

- Any certificated *employee not under permanent tenure,* who *fails to signify his acceptance within 45 days after notice* of his election or employment has been given to him, or mailed to him by United States registered mail with postage

thereon prepaid at his last known address, by the clerk or secretary of the governing board of the school district, SHALL be *deemed* to have *declined* the employment. (Ed.C. #44841)

Acceptance Date for Permanent Employees

- A probationary or *permanent employee* of a school district MAY be *deemed* to have *declined employment* and his services as an employee of the district MAY be *terminated* as of June 30th if, without good cause, he *fails to notify* the governing board *prior to July 1st* of any school year, of his or her intention to remain or not to remain in the service of the district during the ensuing school year, after a *request to give such notice,* including a copy of this section, has been personally served upon him or her, or mailed to him or her by United States certified mail with return receipt requested to his or her last known address, by the clerk or secretary of the governing board of the school district not later than the preceding *May 30th.* (Ed.C. #44842) (21)

Failure to Report for Duty

- If, without good cause, a probationary or permanent employee who was on leave of absence for 20 or more consecutive working days after April 30th of the previous school year *fails to report for duty* at the beginning of the ensuing school year after having notified the governing board of the district of his or her *intention to remain in the service* of the district in accordance with the procedures specified above, the employee MAY be *deemed to have declined employment* and his or her services as an employee of the district may be terminated on the day following the 20th consecutive day of absence. No school district MAY terminate any employee pursuant to this subdivision unless the district has specifically notified the employee, at least five days in advance, of the time and place at which the employee was to report to work, and the employee did not request or was not granted a leave of absence authorized by the governing board of the district. (Ed.C. #44842)

E. Starting Date for Seniority

- Every probationary or permanent employee *employed before July 1, 1947,* SHALL be deemed to have been employed on the date upon which he first accepted employment in a probationary position, except as otherwise provided in Section 44831-44855. (Ed.C. #44844)

- Every probationary or permanent employed *employed after June 30, 1947,* SHALL be deemed to have been employed on the date upon which he first rendered paid service in a probationary position (Ed.C. #44845)

- The following general provisions SHALL apply *regardless of date of employment:*

Order of Reemployment Based on Needs of District

- As between two or more employees who first rendered paid service to the district on the same day, and who, following the termination of services, have a statutory *preference to reappointment* in the order of original employment, the governing board SHALL *determine the order of reemployment solely on the basis of the needs of the district* and the students thereof. (Ed.C. #44846)

- Any *terminated employee* subject to the conditions of this section SHALL, upon request, be *furnished in writing,* no later than 15 days following such request, the reasons and *basis of the needs of the district* and the students thereof utilized

by the governing board in determining which employee or employees shall be reappointed. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of reappointment SHALL NOT be interpreted to give affected employees any legal right or interest that would not exist without such a requirement. (Ed.C. #44846) (151, 156)

- *Records showing date of employment,* whether kept by the district or by the county, SHALL be *accessible, on demand,* to any certificated employee of the district or to his designated representative. (Ed.C. #44846)

- In the *absence of records* as to any of the matters referred to in the two preceding sections, the governing board, in accordance with evidence presented, SHALL determine the order of employment after *giving employees a reasonable opportunity to present such evidence.* (Ed.C. #44846)

- The *order of employment* in all districts, when required, shall be determined as prescribed by Sections 44830 to 44855, inclusive. (Ed.C. #44846)

- The governing board SHALL have *power,* and it SHALL be its *duty* to *correct any errors* discovered from time to time *in its records* showing the order of employment. (Ed.C #44846)

Transfer Between Districts

- When any *school* or part thereof has been *transferred* from one district to another, *employment* for any employees who transfer with the school SHALL *date from* the time the employees first *accepted employment* (if before July 1, 1947) or *rendered paid service* (if after June 30, 1947) as probationary employees in the district from which the school and the employees were transferred. (Ed.C. #44847)

Seniority on Reemployment after Resignation or Dismissal

- When any certificated *employee* has *resigned* or been *dismissed for cause* and has thereafter been *reemployed* by the board, his *date of employment* SHALL be deemed to be the date on which he *first accepted reemployment* (if reemployed before July 1, 1947) or *rendered paid service* (if reemployed after June 30, 1947 after his reemployment. (Ed.C. 44848)

After Termination for Lack of Enrollment

- When an employee's *services* are *terminated for lack of enrollment* or discontinuance of service or are otherwise interrupted in a manner declared by law not to constitute a break in service, his *original order of employment* SHALL stand. (Ed.C. #44848)

F. Exchange — Outside Assigments

Exchange with Other School Systems

- The *governing board* of any school district, subject to the rules and regulations prescribed by the State Board of Education, MAY *enter into an agreement* with the proper authorities of any foreign country, or of any state, territory, or possession of the United States, or other district within the state, *for the exchange* and employment *of regularly credentialed employees* and employees of public schools of any foreign country, state, territory, or possession, or other district within this state. Any certificated person so employed as provided in this section SHALL be known as an *"exchange certificated employee". No exchange SHALL be made without the consent of the employee to be exchanged.* (Ed.C. #44853)

- Due *consideration* SHALL be given to the general *qualifications* and professional *status* of the exchange employee as compared to the general qualifications and professional status of the employee for whom exchanged. However, it *SHALL NOT be a requirement* that an exchange certificated employee be a teacher of the *same subject or grade,* or both, as the employee for whom exchanged. If the service authorized is other than teaching, it SHALL NOT be a requirement that the service be exactly the same as the employee for whom exchanged. (Ed.C. #44853)

- *NO person MAY be employed* as an exchange employee by a school district in the state *unless he holds* the necessary valid credential or credentials issued by the Commission for Teacher Preparation and Licensing authorizing him to serve in a position requiring certification qualifications in the school district proposing to employ him. The Commission MAY establish *minimum standard* for the credentials for *exchange certificated employees,* provided, however, that *no* exchange certificated employee SHALL be *required to pay any fee* or other charge for the issuance to him of any necessary valid credential or credentials authorizing him to serve in a position requiring certification qualifications in any school district in the state. (Ed.C. #44853)

- An exchange agreement MAY be made for a period not to exceed *three years.* (Ed.C. #44853)

- At the end of the assignment period, the *exchange,* with the consent of all parties, MAY be *made* complete and *permanent.* (Ed.C. #44853)

Permanent Classification and Retirement Rights not Affected

- *Acceptance* of any *exchange position* by an employee of any school district in the state *SHALL NOT affect his right of the permanent classification* to which he is entitled, at the time of the acceptance, or *any of his rights* under the state teachers *retirement salary* provisions of this code, or under any local or district retirement plan, or system, and the *time served* in the exchange position SHALL be *counted* as time served in the service of the district in which he is employed immediately prior to acceptance of the exchange position in *determining his status.* (Ed.C. #44854)

- If the *teacher from the district within the state* who serves as an exchange teacher without the state and the governing board regularly employing him so agree, the *district MAY pay his regular salary,* making all deductions provided by law for retirement purposes, during the period of the exchange teaching. In such case, the *district SHALL not pay the salary of the exchange teacher from without the state,* serving the district in exchange for its regular teacher. (Ed.C. #44855)

- In the event a *teacher from a district within this state* serving as an exchange teacher without the state and to whom the governing board of such district is paying the regular salary of such teacher as herein provided, is compelled to absent herself *or quarantine,* the governing board of the district within this state MAY *pay the substitute* employed to take the place of such teacher and SHALL *deduct* the amount so paid the substitute from the compensation of the teacher. (Ed.C. #44855)

Sojourn Certificated Employees Bilingual Instruction

- The governing board of a school district MAY, for the purposes of providing *bilingual instruction, foreign language instruction, or cultural enrichment,* in the schools of the district, subject to the rules and regulations of the State Board of Education conclude arrangements with the proper authorities of any foreign country, or of any state, territory, or possession of the United States, for the *hiring of bilingual teachers* employed in public or private schools of any *foreign country, state, territory, or possession.* To be eligible for employment, *the teacher must speak English fluently.* Any person so employed pursuant to this section SHALL be known as a "sojourn certificated employee". (Ed.C. #44856)

Credentials Required

- *No person MAY be hired as a sojourn certificated employee* by a school district *unless he holds the necessary valid credentials* issued by the Commission for Teacher Credentialing authorizing him to serve in a position requiring certification qualifications in the school district proposing to employ him. Such person MAY be *employed only* for a period *not to exceed two years,* except that thereafter such period of employment MAY be *extended* from year to year for a *total period of not more than five years* upon verification by the employing district that termination of such employment would *adversely affect* an existing *bilingual or foreign language program* or program of cultural enrichment and that attempts to secure the employment of a certificated California teacher qualified to fill such position have been unsuccessful. The Commission SHALL *establish minimum standards* for the credentials for sojourn certificated employees. (Ed.C. #44856)

Teacher Training Institution

- The governing *board* of any school district, a county board of education, or the Department of Education MAY *execute a contract with any California teacher-training institution whereby certificated personnel of the school district,* county, or the Department of Education MAY be *assigned to the teacher-training institution* for a period not to exceed one year. (Ed.C. #44927)

- Any *teacher-training institution* in California MAY execute a *contract with the governing board* of any school district, a county board of education, or the Department of Education whereby *certificated personnel of the institution* MAY be *assigned to school districts,* county boards of education, or the Department of Education for full-time or part-time duty for a period not to exceed one year. (Ed.C. #44927)

Employee's Status Retained

- Any such *contract* SHALL *provide for the payment,* by the entity to which a person is assigned, *to the assigning employer,* of a sum equivalent to the salary and other employment costs of any such employee. In place of such payment, the contract MAY provide for the *exchange* of certificated personnel between the district, county, Department of education or teacher-training institution. Any such employee SHALL *retain his status* as an employee of the school district, county, Department of Education, or teacher-training institution *from which he is assigned* in all respects during the period of such assignment. (Ed.C. #44927)

G. Sex and Narcotics Offenses — Grounds for Non-Employment

- Governing boards of school districts *SHALL NOT employ or retain* in employment in public school service, persons who have been *convicted of any sex offense* as defined in Section 44010 or *narcotics offense* as defined in Section 44011. If, however, any such conviction is reversed and the person is acquitted of the

offense in a new trial, or the charges against him are dismissed, this section does not prohibit his employment thereafter. (Ed.C. #44836, 45123) (37, 14)

Conditions for Employment

- A governing board *MAY employ* a person *convicted of a narcotics offense* in a position requring certification qualification if such person holds an appropriate credential issued by the Commission for Teacher Credentialing. (Ed.C. #44836)

Rehabilitation

- The governing board of a school district MAY *employ* a person convicted of a *narcotics offense* if the board determines, from the evidence presented, that the person has been *rehabilitated* for at least *five years. (Ed.C. #45123)*

- The governing board SHALL determine the type and manner of presentation of evidence, and the *determination of the governing board* as to whether or not the person has been *rehabilitated* is *final.* (Ed.C. #45123)

No Sexual Psychopaths

- Governing boards of school districts *SHALL NOT employ or retain* in employment in public school service any person who has been determined to be a *sexual psychopath.* (Ed.C. #44837, 45124)

- If such determination is *reversed* and the person is determined not to be a sexual psychopath in a new proceeding, or the proceeding to determine whether he is a sexual psychopath is dismissed, this section does not prohibit his employment thereafter. (Ed.C. #44837, 45124)

H. Credential Requirements

Proficiency in Basic Skills

- The Commission on Teacher Credentialing SHALL establish *standards* and procedures for the issuance and renewal of *credentials.* Commencing on *February 1, 1983,* the commission SHALL NOT *issue initially* any credential, permit, or certificate or renewal of any emergency credential to any person to serve in the public schools *unless* the person has *demonstrated proficiency* in basic reading, writing, and mathematics skills in the English language as provided in Ed.C. #44252.5. (Ed.C. #44252)

Period of Validity (Before 9/1/85)

- The *period* for which a *credential,* as authorized under Section 44250 issued *prior to* September 1, 1985, is *valid* SHALL be as follows:
  1. For an *internship* credential: two years.
  2. For a *preliminary* credential, pending completion of the fifth year of study: five years.
  3. For a *life* credential: the life of the holder.
  4. For an *emergency* credential: one year or as the commission may determine. (Ed.C. #44251)

Period of Validity (After 9/1/85)

- The *period* for which a *credential* issued on or *after* September 1, 1985, as authorized under Section 44250 is *valid,* SHALL be as follows:
  1. For an *internship* credential, two years.
  2. For a *preliminary* credential, pending completion of the fifth year of study: five years.

3. For an applicant's *first clear multiple or single subject* teaching credential: the life of the holder, if the holder meets the requirements of Section 44277.

4. For any *clear multiple or single subject* teaching credential other than those to which paragraph (3) applies, the life of the holder.

5. For an *emergency* credential: one year or as the commission may determine. (Ed.C. #44251)

Maintaining Validity of Clear Credential

- The minimum requirements for *maintaining the validity* of the clear multiple or single subject teaching credential pursuant to Section 44251 SHALL be *both* of the following:

  1. Successful *service* as a classroom teacher or successful service authorized by *one-half of a school year.*

  2. *Completion* of an individual *program of professional growth* as prescribed in this section and by the commission. (Ed.C. #44277)

Professional Growth Program

- An individual program of professional growth SHALL consist of a minimum of *150 clock hours* of participation in *activities* which *contribute to competence, performance, or effectiveness in the profession of education.* Acceptable activities SHALL be defined by the commission to include, among other acceptable activities, the completion of courses offered by regionally accredited colleges and universities; participation in professional conferences, workshops, teacher center programs or staff development programs; service as a mentor teacher pursuant to Section 44496; participation in school curriculum development projects; participation in systematic programs of observation and analysis of teaching; in a leadership role in a professional organization; and participation in educational research or innovation efforts. Employing agencies and employees' bargaining agents MAY negotiate to agree on terms of programs of professional growth within their jurisdictions, provided that the agreements SHALL be consistent with the provisions of this section. (Ed.C. #44277)

- An individual *program* of professional growth SHALL be *developed and planned* by the holder of a clear teaching credential. Before a holder of a clear teaching credential commences or amends an individual program of professional growth, a school *principal,* a *mentor teacher* provided for in Section 44496, or other district designee SHALL *certify to the credential holder that the planned program or amendment complies* with this section and with regulations of the commission. (Ed.C. #44277)

- A clear teaching credential SHALL be deemed to *remain valid* so long as the holder of the credential, at *five-year intervals,* submits to the commission *verification* by a school principal, a mentor teacher, or other district designee that the holder has *satisfied the minimum requirements* specified above for maintaining the validity of the credential. In the absence of adequate verification, the commission SHALL invalidate the credential. *For procedure, see the Education Code.* (Ed.C. #44277)

California Basic Educational Skills Test (CBEST)

- The Commission on Teacher Credentialing SHALL *administer* the California Basic Educational Skills Test (CBEST). A *fee* SHALL be charged to individuals being tested to *cover the costs* of the test. Any individual who *passes* CBEST is considered *proficient* in the skills of reading, writing and mathematics, and SHALL NOT be required to be retested by this test for purposes of meeting the proficiency requirements. Anyone who *passes one or more components* of CBEST SHALL be deemed to have demonstrated his or her proficiency in these subject areas and SHALL NOT be required to be retested in these subjects. (Ed.C. #44252.5)

Internship Credential Life Credential

- The commission MAY issue a *preliminary or internship credential,* for a period not to exceed one year, to any applicant who is seeking a *vocational designated subject credential* or pending the completion of any *examination* required by the commission *other than the CBEST.* (Ed.C. #44253)

Emergency Credential

- *Emergency credentials* MAY be issued in accordance with regulations adopted by the commission. Emergency credentials SHALL *only* be authorized when *insufficient certified teachers* are available. An emergency credential MAY NOT be issued unless the holder has received a baccalaureat degree from a regionally accredited institution. With the exception of this chapter, any reference in any law or regulation to a "provisional credential" SHALL be deemed to mean an "emergency credential." (Ed.C. #44254)

- No life credential SHALL be issued until all requirements for the credential have been met and the candidate has taught for two years in California schools. (Ed.C. #44255)

Temporary Certificates

- *Temporary Certificates* may be issued authorizing salary payments while credential or permit applications are being processed, if the individual has *demonstrated proficiency* in basic reading, writing and mathematics skills. Such certificates SHALL be valid for not more than *120 school days,* and MAY be *extended* once for not more than *60 school days* due to processing delays. The certificate SHALL NOT be valid beyond the time that the commission either issues or denies the originally requested credential. (Ed.C. #44332)

Teacher Trainee Certificate

Teacher trainee certificates SHALL be valid for two years and MAY be extended for one year. See Part II, Section J of this Digest for requirements. (Ed.C. #44325)

- The commission SHALL adopt, in addition to any other regulations authorized by law, regulations requiring every applicant for a credential, or for the renewal of a credential, to *submit reasonable evidence of identification and good moral character,* as related to fitness to teach. The following information SHALL be supplied to each applicant on the application form:

  1. The *offenses* which constitute *grounds* for the *mandatory denial or revocation* of a credential.

  2. The offenses for which the commission is *authorized to deny or revoke* a credential, depending upon the degree of rehabilitation or requalification demonstrated by the applicant.

3. The standards under which the commission determines that it *shall not investigate* or pursue offenses which are *not clearly related* to an applicant's fitness or competence to teach or perform other certificated services (Ed.C. #44339)

Conditions under which Credentials become void

- Credentials SHALL be deemed *void* under the following circumstances: (Ed.C. #44355)

a. Except as provided in subdivision (b), all credentials regularly issued are *valid until revoked,* suspended, or expired as provided by law.

b. A credential issued under either of the following circumstances is void and SHALL be *deemed to be void from the date it was issued.*

1. A credential which would not have been issued but for a *material deception* or *fraud* committed by an applicant or by another in the applicant's behalf; or

2. A credential which the commission had *no lawful authority to issue* and which would not have been issued but for some material mistake of law or fact by either or both the applicant and the commission.

c. A *notice* that a credential is void pursuant to paragraph (1) or (2) of subdivision (b) SHALL be *served* upon the credential *holder* at his or her last known address as provided in Section 10-13 of the Code of Civil Procedure. Within 30 days thereafter, such *notice MAY be appealed* to the commission *only* on the *grounds* that there was *no fraud, material description, or error,* and that the commission had the lawful authority to issue the credential on the facts stated in the application. (Ed.C. #44355)

Positions Requiring Credentials

- Any person employed on or after July 1, 1963, by a school district, or by a county superintendent of schools, in a position in which *50 percent or more of his duties* performed during the school year, whether performed in a particular school or district or countywide, consists of rendering service in *directing, coordinating, supervising or administering* any portion or all of the types of functions listed below in this section SHALL *hold a valid teaching or service credential* as appropriate, whichever is designated in regulations adopted by the Commission on Teacher Credentialing, authorizing the particular service. (Ed.C. #44065)

Designated Credentials

- The *types of functions* are:

1. The *work of instructors* and the *instructional program* for pupils.

2. Educational or vocational *counseling, guidance and placement* services.

3. School *extracurricular activities related to* and an outgrowth of the *instructional and guidance* program of the school.

4. *Planning courses of study* to be used in the public schools of the state.

5. The *selection,* collection, preparation, classification or demonstration of

instructional materials of any course of study for use in the development of the instructional program in the schools of the state.

6. The *examination selection,* in-service *training,* or *assignment* of *teachers, principals or other certificated personnel* involved in the instructional program.

7. *Research* connected with the *evaluation* and *efficiency* of the *instructional program.*

8. The *school health program.*

9. Activities connected with the *enforcement of the laws relating to compulsory education,* coordination of child welfare activities involving the school and the home, and the school adjustment of pupils.

10. The school *library* service.

11. The *preparation* and distribution of *instructional materials.*

12. The *in-service training of certificated personnel.*

13. The interpretation and *evaluation of* the school *instructional program. (Ed.C. #44065)*

Exceptions

- Any person who was *employed* by a district or by a county superintendent of schools *before July 1, 1963,* to *perform* any of the *services* designated by the Commission on Teacher Credentialing to *require a supervision or administration credential,* MAY *continue to perform* such services *without possessing the credential* otherwise required as long as he remains continuously employed to perform the same services in that county superintendent's office or in that district in which he was employed on that date, or is continuously employed to perform the same services in a district which results from a reorganization involving the same district. (Ed.C. #44065)

- A governing board of any school district, or a county board of education, or a county superintendent of schools or other appointing authority SHALL NOT *require* an employee or applicant to possess any *certification, license, or other credential unless* the possession of such a certification, license, or other credential is *required by statute or is based upon a bona fide occupational qualification.* (Ed.C. #44066)

Deemed to be in position Requiring Certification

- Any person who has served in a position for which certification, license, or other credential not necessitated by statute or bonafide occupational qualification, has been required, and in a position which was designated by the governing board as a position requiring certification qualifications, SHALL be *deemed* to be an *employee in a position requiring certification qualifications* for as long as he or she holds such position and such position SHALL be deemed to be a certificated position for as long as such person holds such position. (Ed.C. #44066)

- Any person who, on *September 15, 1961,* was serving in a position for which a credential was issued or certification qualifications required pursuant to Section

44286 prior to the repeal of such sections, SHALL be *deemed to be an employee in a position requiring such credential* or certification qualifications for as long as he holds such position after September 15, 1961. (Ed.C. #44067)

- Any person who, on *June 30, 1965,* was serving in a position requiring certification qualifications pursuant to the provisions of subdivisions (m), (n), and (o) of Section 44065 in effect immediately prior to the effective date of this section, SHALL be *deemed to be an employee in a position requiring certification qualifications* for as long as he holds such position after the effective date of this section and such position shall be deemed to be a certificated position for as long as such person holds such position. (Ed.C. #44068)

Registration of Certification Document

- Each *person employed* by the governing board of a school district for a *position requiring certification qualifications* SHALL, not later than 60 days after the date fixed by the governing board of the district for the commencement of the person's service, *register* in the manner prescribed by section 44310 a valid certification document, issued on or before that date, authorizing the person to serve in the position for which he or she was employed, and SHALL, not later than 60 days after the *renewal* thereof, *register* the *renewed certification document* in the manner prescribed by section 44310. If any person so employed is the holder of a California State University or state teachers college diploma accompanied by the certificate of the State Board of Education, or of an educational or life diploma of this state, and has presented the diploma to, and *has had his name recorded by, the county superintendent of schools* of the county, the person shall be *deemed to have registered* such diploma under section 44310. (Ed.C. #44857)

Legality in Absence of Credential

- Whenever, on or after September 15, 1961, a *person has rendered service in a position requiring certification qualifications,* or the governing board of a district has *employed* a person in a position requiring certification qualifications, or the county superintendent has *drawn an order for a warrant* in favor of a person in a position requiring certification qualifications, for a period of service during which *the person did not have a valid credential required for such position* in force as required by law, such employment, rendering of service, inclusion of attendance of pupils taught by the person in the averge daily attendance of the district, or drawing of the order for the warrant SHALL be *deemed fully legal* for all purposes *if the Commission on Teacher Credentialing approves* thereof in accordance with this section. (Ed.C. #45036)

- The *Commission* on Teacher Credentialing SHALL *adopt rules* and regulations to establish procedures for a *review in such cases,* and SHALL *determine* whether the rendering of such service shall be *approved* and made fully legal for all purposes. *If the commission gives its approval* to the rendering of such service, then such employment, inclusion of attendance, and drawing of the order for the warrant SHALL be *automatically approved* and made fully legal for all purposes. (Ed.C. #45036)

Requirements for Approval in Absence of Credential

- The commission SHALL NOT approve of the rendering of such service *unless* it *determines* that the *person* rendering the service *had,* in fact, the *necessary qualifications,* during the period of service in question, for the credential required by law for the position in which the service was rendered, *and unless* a

valid *credential* required for such position *has been issued to such person* prior to review and action by the commission. (Ed.C. #45063)

Business Manager

- Any person who, on September 17, 1965, was serving in a position as *business manager* and had been assigned a title listed in Section 35028 SHALL be *deemed* to be an *employee in a position requiring certification qualifications* for so long as he holds such position in the same district. (Ed.C. #44069)

- Any person who, on March 4, 1972, was serving in a position of *business manager* and that *position has been declared,* by the governing board, *to be one requiring certification qualifications* in accordance with the authority extended in this section prior to March 4, 1972, SHALL be *deemed* to be an *employee in a position requiring certification qualifications* for so long as he holds such position in the same district (Ed.C. #44069)

- Except in any school district with less than 3,000 units of average daily attendance, on or after March 4, 1972, NO person employed in a position of *business manager* SHALL be *required to be credentialed* and no title assignment, work, duty statement or other device, including but not limited to educational or other requirements of applicants, which may be established by the governing board may be construed to require certification qualifications for any such position or reasonably related position. (Ed.C. #44069)

I. Special Credential

- *No* teacher holding a *special certificate* SHALL be employed to teach any subject *not authorized* in the certificate. (Ed.C. #44868) (155)

J. Librarian Credential

- *No* person SHALL be *employed* as a *librarian* in any elementary or secondary school, *unless* he holds a valid *credential* of proper grade authorizing service as a *librarian,* or a valid *teaching credential* issued by the Commission on Teacher Credentialing if he has completed the *specialized* area of *librarianship.* (Ed.C. #44269)

- The standards for librarian credentials are a baccalureate degree or higher degree from an institution approved by the commission, a valid teaching credential and such specialized and professional preparation as the commission may require. (Ed.C. #44269)

- Any *librarian* when employed full time as a librarian or serving full time, partly as librarian and partly as teacher, SHALL *rank as a teacher.* (Ed.C. #44869)

K. Special Lecturers

- The *principal* of any public school MAY *employ,* when so directed by the governing board of the school district, *special lecturers* well qualified in their subjects to *speak before classes and assemblies* of students of the school, *without the lecturer being required to hold a teacher's credential* or certificate. (Ed.C. #44880)

- *No* such lecturer MAY be *employed* by the principal of any school for *more than four lectures* in any term. (Ed.C. #44880)

L. Contracting of Personnel Services

- The governing board of a *small school district,* which does not employ persons charged with school-community duties of counseling students and parents or guardians in their homes, MAY *contract* with any qualified *social service agency* or organization to secure the services, *on a part-time or full-time basis,* of *qualified social workers as counselors* in schools and in the homes of pupils. The State Board of Education SHALL *adopt rules* but *such social workers SHALL NOT be required to hold credentials* or certification documents otherwise required under this code for service in the public schools. (Ed.C. #44046)

- *Social workers* authorized to serve under this section, as well as *credentialed school social workers* in districts other than small school districts, MAY *perform,* but are not limited to, the performance of the *following service to children, parents, school personnel, and community agencies:*

  1. Group and individual *counseling* and *casework* with parents and children, relating to *learning and adjustment problems of children,* including parent education.

  2. *Liaison with community resources* offering services to school children and their families.

  3. *Consultation with parents* and other in *crisis situations,* such as truancy, drug abuse, suicide threats, assaults, and child abuse.

  4. *Assessment* of *social and behavioral disabilities affecting learning,* including but not limited to case study evaluation, recommendations for remediation or placement, and periodic reevaluation.

  5. Participation in and coordination of *staff development programs* for professional, paraprofessional, and classified school staff and supervision of pupil personnel services workers.

  6. *Coordination* of *social services and mental health* components of *children's centers* and other *early childhood development programs* in the public schools.

  7. *Consultation* and collaboration *with school personnel* to promote a school environment responsive to the needs of children and the planning of educational programs which will prepare children to function in a culturally diversified society. (Ed.C. #44046)

- As used in this section, "small school district" means any of the following school districts:

  1. A unified school district having an average daily attendance of less than 1,501.

2. A high school district having an average daily attendance of less than 301.

3. An elementary school district having an average daily attendacy of less than 901. (Ed.C. #44046)

M. Age and Marital Status

- The Legislature hereby declares that it is *contrary to the interest of this state* and of the people thereof for any governing board or any person charged by the governing board of any school district with the responsiblity of *interviewing* and *recommending persons for employment* in positions requiring certification to fail or *refuse to do so for reason of the age or marital status* of any applicant for such employment, except as otherwise provided in this code. (Ed.C. #44858)

- No person is eligible to teach in any public school in the state, or to receive a certificate to teach who has not attained the age of 18 years. (Ed.C. #44862)

N. Residency Requirements

- *No* school district may *adopt* or maintain any *rule* or regulation which *requires a candidate* for a position requiring certification qualifications *to be a resident of the district* or to become a resident of the district, or which requires that an employee *maintain residency within the district;* nor may a district grant any *preferential treatment* to candidates or employees because they are *residents* of the district. (Ed.C. #44859)

- The Legislature in enacting this section recognizes that the public school system of this state is the property of all its citizens, and that all qualified candidates for positions of employment with school districts, regardless of residence, should be granted the opportunity to compete for and obtain such positions based solely on merit and fitness (Ed.C. #44859)

O. Basic Skills Proficiency for Employment

- a. A governing board of a school district SHALL *employ* for positions requiring certification qualifications, *only persons who possess by qualifications* therefor proscribed by law. It is contrary to the public policy of this state for any person or persons charged by the governing boards, with the responsibility of recommending such persons for employment by the boards to refuse or to fail to do so for reasons of race, color, religious creed, sex, or national origin of the applicants for such employment. (Ed.C. #44830)

Must Pass Basic Skills Test

- b. Commencing on February 1, 1983, *no school district governing board SHALL initially hire* on a permanent, temporary, or substitute basis a *certificated person* seeking employment in the capacity designated in his or her credential *unless* that person has *demonstrated basic skills proficiency* as provided in Section 44252.5 or unless the person is exempted from the requirement by subdivisions (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n).

  1. The governing board of a school district, with the authorization of the commission on Teacher Credentialing, MAY *administer* the basic skills

proficiency test required under the provisions of Sections 44252 and 44252.5

2. The *superintendent,* in conjunction with the commission and local governing boards, SHALL take steps necessary to ensure the effective *implementation* of this subdivision.

   School district governing boards SHALL *direct superintendents* of schools to prepare for emergencies by *developing a pool* of qualified emergency *substitute teachers.* This preparation SHALL include public notice of the test requirements and of the dates and locations of administrations of the tests. District governing boards SHALL make special efforts to *encourage individuals* who are known to be qualified in other respects as substitutes *to take the state basic skills proficiency test* at its earliest administration.

3. Demonstration of proficiency in reading, writing, and mathematics by any person pursuant to Section 44252 shall satisfy the requirements of this subdivision. (Ed.C. #44830)

Exemptions

- c. A certified person SHALL NOT be *required to take* the state basic skills *proficiency test* if he or she has been *employed in a position requiring certification* in any school district *within 39 months* prior to employment with the district.

- d. *Nothing in this section* SHALL require a person employed solely for purposes of *teaching adults* in a *apprenticeship program,* approved by the Apprenticeship Standards Division of the Department of Industrial Relations, to pass the state proficiency assessment instrument as a condition of employment.

- e. *Nothing* in this section SHALL require the *holder of a child care permit* or a permit authorizing service in a development *center for the handicapped* to take the state basic skills proficiency test, so long as the holder of the permit is not required to have a baccalaureate degree.

- f. Nothing in this section SHALL require the *holder of a credential* issued by the commission who seeks an additional credential or authorization to teach, to take the state basic skills proficiency test.

- g. *Nothing* in this section SHALL require the holder of a credential to provide service in the *health profession* to take the state basic skills proficiency test, so long as that person does not teach in the public schools.

- h. If the basic skills proficiency test is not administered at the time of hiring, the holder of *a vocational* designated subject credential who has not already taken and passed the basic skills proficiency test may be hired on the condition that he or she will *take the test at its next local administration.*

- i. If the holder of a *vocational* designated subject credential *does not pass* a proficiency assessment in basic skills pursuant to this section, he or she SHALL be *given one year* in which to *retake* and *pass* the proficiency assessment in basic skills. If at the expiration of the one-year period he or she

has not passed the proficiency assessment in basic skills, he or she SHALL be *subject to dismissal* under procedures established in Article 3 (commencing with Section 44930) of Chapter 4.

- j. *Nothing* in this section SHALL be construed as *requiring* the holder of a *vocational* designated subject credential *to pass* the *state* basic skills proficiency test as a condition of employment. The governing board of each school district, SHALL establish its own basic skills proficiency for these credentials and SHALL arrange for those individuals to be assessed. The basic skills proficiency criteria established by the governing board SHALL be at least equivalent to the test required by the district, for graduation for high school. The governing board or boards may charge a fee to individuals being tested to cover the costs of the test, including the costs of developing, administering, and grading the test.

- k. *Nothing* in this section SHALL be construed as *requiring* the holder of an *adult education* designated subject credential for other than academic subjects, who is employed in an instructional setting for 20 hours or less per week, to pass the state proficiency assessment as a condition of employment.

- l. *Nothing* in this section SHALL be construed to *require* certificated personnel employed under a *foreign exchange program* to take the state basic skills proficiency test. The maximum period of exemption under this subdivision shall be *one year*.

- m. A school district MAY hire a teacher *credentialed in another state* who has not taken the state basic skills test if, at a public meeting, the school district governing board certifies that no person who meets the credentialing requirements and who has satisfied the basic skills requirement specified in Section 44261.5 is available to fill a position deemed necessary to the normal operation of the school curriculum. The board SHALL include in the certification a statement of the need to fill the position and the reasons for the need, proof of its attempts to recruit qualified teachers in California, and a statement attesting to the failure of those attempts. Such certification SHALL be submitted to the commission with the name of the teacher the board intends to employ pursuant ot this section. The commission SHALL issue an emergency credential pursuant to paragraph 3 of subdivision (b) of Section 44252, upon receipt of this documentation.

- n. Notwithstanding any other provision of law, a school district MAY *hire* a certificated teacher who has *not taken the state basic skills proficiency test* if that person has not *yet been afforded the opportunity* to take the test. The person SHALL then take the test at the earliest opportunity and may remain employed by the district pending the receipt of his or her test results.

- o. The commission SHALL require that each *applicant for a credential* issued by the commission, unless exempted by the provisions of Section 44252, *take the state basic skills proficiency test* for *diagnostic* purposes. Each applicant SHALL take the test no later than the deadline for the submission of his or her application for entrance to the credential program. Test results SHALL be forwarded to each California post-secondary institution to which the applicant has applied. (Ed.C. #44830)

II. Employee Classification

A. Acquiring and Maintaining of Permanent Status

Three Years Probationary Period (Before 1983-1984)

- *Every employee* of a school district of any type or class having an average daily attendance of 250 or more who, after having been *employed* by the district for *three complete consecutive school years* in a position or positions requiring certification qualifications, *is reelected* for the next succeeding school year to a position requiring certification qualifications SHALL, at the commencement of the succeeding school year, be classified as and become a *permanent employee* of the district. This shall apply only to probationary employees whose probationary period commenced prior to the 1983-1984 fiscal year. (Ed.C. #44882) (65, 60, 38, 33, 116, 111, 36, 42, 59, 43, 84, 114, 7, 58)

Two Years Probationary Period

- *Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed* by the district for *two complete consecutive school years* in a position or positions requiring certification qualifications, *is reelected* for the next succeeding school year to a position requiring certification qualifications SHALL at the commencement of the succeeding school year be classified as and become a *permanent* employee of the district. (Ed.C. #44882)

March 15 Notice

- The governing board SHALL *notify* the employee, on or before *March 15* of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the *decision to reelect or not reelect* the employee for the next succeeding school year to such a position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee SHALL be deemed *reelected* for the next succeeding *school year*. This subdivision shall apply only to probationary employees whose probationary period commenced during the *1983-84 fiscal year* or any fiscal year thereafter. (Ed.C. #44882)

- At the *discretion* of the governing board of a district with 60,000 average daily attendance or more, *every employee* of the district who, after having been *employed* by the district for *two consecutive school years* in a position or positions requiring certification qualifications, is *reelected* for the next succeeding school year to a position requiring certification qualifications MAY, at the commencement of the succeeding school year, be classified as and become a *permanent* employee of the district. If such board is the governing board of more than one district, it may exercise the discretionary power given it by this section in each district under its jurisdiction, whether or not each of such districts has 60,000 average daily attendance. This SHALL apply only to probationary employees whose probationary period commenced prior to the 1983-1984 fiscal year. (Ed.C. #44884) (68)

- *Every employee* of a school *district* having an average daily attendance of *less than 250 pupils*, who, after having been *employed* by the district for *three complete consecutive school years* in a position or positions requiring certifiction qualifications, is *reelected* for the next succeeding school year to a position requiring certification qualifications, MAY be classified by the governing board of the district as a *permanent* employee of the district. If the *classification* is *not made* the employee SHALL NOT attain *permanent* status and may be reelected

from year to year thereafter without becoming a permanent employee until the classification is made. (Ed.C. #44885) (66)

Teacher Trainees

- Any school district maintaining grades 9 to 12, inclusive, or maintaining grades 7 and 8 in a departmentalized junior high school, SHALL *classify as a probationary employee* of the district any person while that person is employed as a *teacher trainee* pursuant to Section 44830.3 and any person who has *completed two years of service* in the district as a *teacher trainee* and is reelected for the next succeeding school year to a *position requiring certification* qualifications. (Ed.C. #44885.5)

- The governing board MAY *dismiss or suspend* employees classified as probationary employees pursuant to this subdivision in accordance with the procedures specified in Section 44948.3. (Ed.C. #44885.5)

- Every employee of a school district maintaining grades 9 to 12, inclusive, or maintaining grade 7 and 8 in a departmentalized junior high school, who, after having been employed as a *probationary employee* by the district for *three complete consecutive school years,* composed of *two years* of service as a *teacher trainee* and *one year* in a *position requiring certification* qualifications, is reelected for the next succeeding year to a position requiring certification qualifications SHALL at the commencement of the succeeding school year, be *classified* as and become a *permanent* employee of the district. (Ed.C. #44885.5)

March 15 Notice

- The governing board SHALL *notify* the employee, on or before *March 15* of the employee's third complete consecutive school year of employment by the district as a probationary employee, of the *decision to elect or not reelect* the employee for the next succeeding school year to such a position. In the event the governing board does not give notice pursuant to this section on or before March 15, the employee SHALL be *deemed reelected* for the next succeeding school year. (Ed.C. #44885.5)

Teachers for Adults

- When a *teacher of classes for adults* serves sufficient probationary time as provided in Sections 44882 to 44885 and 44908 to be eligible for election to *permanent* classification in that district, his *tenure* SHALL be for such service as is equivalent to the *average number of hours per week* which he has served during his probationary years. In no case shall an employee be classified as permanent for more than one full-time assignment. The service for which such a person has acquired tenure may be reduced in conformity with Sections 44955 and 44956. (Ed.C. #44887) (7, 107)

- Notwithstanding any other provision to the contrary in a *district* which has, or in a district which is one of two or more districts governed by governing boards of identical personnel which have a combined, average daily attendance of *400,000 or more, no person* who is assigned *10 hours or less a week* in adult classes in such a district SHALL BE *eligible* for election to *permanent* classification in such district on account of such assignment in adult classes. (Ed.C. #44887)

- Notwithstanding any other provision to the contrary, any person who is employed to teach adults for *not more than 60 percent of the hours per week* considered a *full-time assignment* for permanent employees having comparable

duties SHALL be classified as a *temporary* employee, and shall not become a probationary employee under the provisions of Section 44954. (Ed.C. #44887) (36)

- *Nothing* in Sections 44882 to 44885, inclusive, *SHALL be construed* to give *permanent* classification to a person in the *adult school who is already classified as a permanent employee* in the *day school.* In case a teacher obtains permanent classification in the evening school and later is eligible for the same classification in the day school by reason of having served the probationary period therein, he SHALL be given his *choice* as to which he shall take. (Ed.C. #44890) (7)

Service in Evening School

- Notwithstanding any other provision to the contrary, *service in the evening school SHALL NOT be included* in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a *permanent employee in the day school,* except service in the evening school rendered by a person rendering services in the day school who is directed or *specifically requested* by the school district to render services in the evening school either in addition to, or instead of, rendering service in the day school. (Ed.C. #44890)

- Service in the *day school* SHALL NOT be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a *permanent* employee in the *evening school,* except service in the day school rendered by a person rendering services in the evening school who is directed or *specifically requested* by the school district to render instead of, rendering service in the evening school. (Ed.C. #44980)

Service in More Than One District

- Any certificated employee having *permanent* classification in a district, who is *granted a leave of absence and transfers* to another district which is under the supervision of the *same chief administrative officer* or district superintendent as the district from which the employee is on leave, MAY acquire *permanent* classifiction in the *district to which he transferred* if he is *employed for a second year* in that district, at which time his permanent classification in the district from which he transferred shall expire. (Ed.C. #44900)

Status in 250 or more Daily Attendance Districts

- A certificated *employee* who has served in a *position* or positions requiring certification qualifications in *two or more districts,* each having an average daily attendance of 250 or more and governed by governing boards of identical personnel, for a total of *three complete consecutive school years,* upon being *elected for the fourth consecutive school year* to a position or positions requiring certification qualifications *in any of the districts,* SHALL at the commencement of the fourth consecutive school year, be classified as a *permanent* employee of the *last district* in which he was employed prior to his election for the fourth consecutive school year. (Ed.C. #44901)

Before 1983-1984

- Where there are *two or more districts* each having an average daily attendance of 250 or more and governed by *governing boards of identical personnel,* a certificated employee who has served in one of the districts for *three complete consecutive school years,* upon being elected for the *fourth consecutive school year* to a position or positions requiring certification qualifications in *any* of the districts, SHALL, at the commencement of the fourth consecutive school year, be classified as and become a *permanent* employee of the *last district* in which he was employed prior to his election for the fourth consecutive school year. This

SHALL apply only to probationary employees whose probationary period commenced prior to the 1983-1984 fiscal year. (Ed.C. #44901)

From 1983-1984 Fiscal Year

- A certificated employee who has *served in a position* or positions requiring certification qualifications *in two or more districts,* each having an average daily attendance of 250 or more and governed by governing boards of identical personnel, for a total of *two complete consecutive school years,* upon being *elected for the third consecutive school year* to a position or positions requiring certification qualifications in any of the districts, SHALL at the commencement of the third consecutive school year be classified as a *permanent employee of the last district* in which he or she was employed prior to his or her election for the third consecutive school year. (Ed.C. #44901)

- Where there are *two or more districts,* each having an average daily attendance of 250 or more and *governed by governing boards of identical personnel,* a certificated employee who has served in one of the districts for *two complete consecutive school years,* upon being *elected* for the *third* consecutive school year to a position or positions requiring certification qualifications in *any* of the districts, SHALL at the commencement of the third consecutive school year be classified as and become a *permanent* employee of the *last district* in which he or she was employed prior to his or her election for the third consecutive school year. (Ed.C. #44901)

March 15 Notice

- The governing board SHALL *notify* the employee, on or before *March 15* of the employee's second complete consecutive school year of employment by the districts in a position or positions requiring certification qualifications, of the *decision to reelect* or not reelect the employee for the next succeeding school year to such a position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee SHALL be *deemed reelected* for the next succeeding school year. This subdivision SHALL apply only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter. (Ed.C. #44901)

Employment with County Superintendent Reemployment Rights

- If a person *employed by the county superintendent* of schools in a position requiring *certification qualifications* is *assigned* to a *position* under the same superintendent *not requiring certification qualifications,* the employee SHALL *retain* all *sickness and injury, sabbatical leave,* and *other rights and benefits.* All *seniority and tenure rights* accumulated by him at the time of assignment to the position not requiring certification qualifications SHALL be secured to him for a period of *39 months* from the time of acceptance of the classified position. His *return* to certificated service at any time *within 39 months* SHALL be treated as if there had not been an interruption in his certificated service. (Ed.C. #44061) (11)

- If a person *employed by the county superintendent* of schools in a position *not requiring certification qualifications* is *assigned* to a *position* under the same superintendent *requiring certification qualifications,* the employee SHALL retain all *sick leave, vacation and other rights and benefits* accumulated by him at the time of assignment to the position requiring certification qualifications. All *seniority and permanency rights* SHALL be secured to such an employee for a period of *39 months* from the date of his acceptance of the certificated position. Such an employee SHALL be *eligible to return to* and assume the duties of his

prior classified position at any time during the *39 months* and his return shall be treated as if there had not been an interruption in his classified service (Ed.C. #44062)

Certificated to Classified Position

- If an *employee of a school district,* employed in a position requiring *certification* qualifications is *assigned* to a position in the *classified service* of the *same district,* the employee SHALL *retain* all *sickness and injury, sabbatical leave, and other rights and benefits.* All *seniority and tenure rights* accumulated by him at the time of assignment to the position in the classified service SHALL be *secured* to him for a period of *39 months* from the time of acceptance of the classified position. His *return* to certificated service at any time with the 39 months SHALL be treated as if there had not been an interruption in his certificated service. (Ed.C. #44063)

Classified to Certificated Position

- If an *employee of a school district,* employed in a position in the *classified service* is assigned to a *position* in the *same district* requiring *certification* qualifications, the employee SHALL *retain all sick leave, vacation, and other rights and benefits* accumulated by him at the time he is assigned to a position requiring certification qualifications. All *seniority and permanency rights* SHALL be secured to such an employee for a period of *39 months* and his *return* SHALL be treated as if there had not been an interruption in his classified service (Ed.C. #44064)

- *No employee* of a school district or districts, in which the average daily attendance of all said districts combined is in excess of 200,000, governed by the same governing board SHALL hereafter acquire *permanent certificated tenure* or *permanent noncertificated status, or a combination of such tenure and status, for more than one full-time position.* Any employee who hereafter acquires any combination of permanent certificated tenure or permanent noncertificated status or both which *exceeds* that for one full-time position SHALL have a *choice* which tenure or status to retain so long as that retained does not exceed one full-time position. (Ed.C. #44889)

Permanent Status in only one Full-Time Position

- It is the intent of this section that an employee holding permanent certificated tenure or permanent noncertificated status for a full-time position may not have permanent tenure or status protection for any additional time in either a certificated or a noncertificated position under any such school district governed by the same governing board. (Ed.C. #44889) (107)

Age 70

Repealed

- Except in districts situated wholly or partly within the boundries of a city or city and county where the charter of the city or city and county provides an age at which employees, including certificated employees of the districts, shall be retired, when a permanent or probationary employee reaches the *age of 70 years,* his or her *permanent or probationary classification SHALL cease* and thereafter employment SHALL be from *year to year* at the discretion of the governing board (Ed.C. #44906) (74, 61, 112) THIS SECTION WAS REPEALED IN 1983.

Terminating Employment beyond a Full-Time Position

- In the event a *permanent employee* of a school district has *tenure as a full-time employee* of a district, any *assignment* or employment of such employee *in addition to his full-time assignment* MAY be *terminated* by the governing board of the district at *any time. (Ed.C. #44923) (1)*

Service in Regional Occupational Centers

- Service by a person as an *instructor* in classes conducted at *regional occupational centers* or programs, SHALL NOT be *included* in *computing* the service required as a prerequisite to attainment of, or eligibility to, classification as a *permanent* employee of a school district. This SHALL NOT *apply* to any *regularly credentialed teacher* who has been employed to teach in the *regular educational programs* of the school district and *subsequently assigned* as an instructor in regional *occupational centers* or programs, nor SHALL it affect the status of regional occupational center teachers classified as permanent or probationary at the time this section becomes effective. (Ed.C. #44910)

Service under Provisional Credential

- Service by a person under a *provisional* credential SHALL NOT be *included* in *computing* the service required as a prerequisite to attainment of, or eligibility to, classification as a *permanent* employee of the school district. This section SHALL *not* be *applicable* to teachers granted a one-year *emergency credential. (Ed.C. #44911)*

Service as Basic Military Drill Teacher

- Service under a credential authorizing service only as a *teacher of basic military drill* in high school cadet companies established under Chapter 1 of Part 2 of Division 2 of the Military and Veterans Code SHALL NOT be *included* in *computing* the service required as a prerequisite to attainment of, or eligibility to, classification as a *permanent* employee of a school district. (Ed.C. #44912)

Service in Summer School

- *Nothing* SHALL be *construed* as *permitting* a certificated employee to acquire *permanent* classification with respect to employment in a *summer school* maintained by a school district, and service in connection with any such employment SHALL NOT be *included* in *computing* the service required as a prerequisite to attainment of, or eligibility to, classification as a *permanent* employee of the district. (Ed.C. #44913)

Effects of District Reorganization on Classification

- The *reorganization* of any *school district* or districts SHALL NOT *affect* the *classification* of certificated employees already employed by any school district affected. If such reorganization results in the school or other place in which any such employee is employed being maintained by another district, any such employee, if a pemanent employee of the district which formerly maintained such school or other place of employment, SHALL be employed as a permanent employee of the district which thereafter maintains the school or other place of employment, unless such employeee elects prior to February 1 of the year in which the action will become effective for all purposes to continue in the employ of the first district. (Ed.C. #35555) (131) (152)

- In a *district which becomes unified,* effective for all purposes on July 1, 1980, *certificated employees,* employed for the school year 1980-81, who were employed for the school year 1979-80 by a union high school district included in the territory within the *newly organized unified school district* MAY be *placed* on the *salary schedule* of the unified school district and be *given credit* for all service as an employee of the union high school district for years of experience as an employee of the union high school district. Their date of first paid service as a probationary employee MAY be the date established by the union high school district. Their date of first paid service as a probationary employee MAY be the date established by the union high school district (Ed.C. #44912.1)

- In a *school district which becomes unified,* effective for all purposes, on July 1, 1980, *certificated employees* who are employed for the school year 1979-80 by a union high school district included in part in the territory within the *newly organized unified school district* SHALL be *entitled to be employed* by the unified district for the school year 1980-81 *only if* such employees were employed within the schools being acquired by the unified district. However, the unified school district MAY, but is not required to, employ additional employees of the union high school district to the extent the unified school district agrees to employ such employees. (Ed.C. #44902.2)

- On the *unionization, unification,* uniting or consolidation of one or more school districts in which the *average daily attendance* for the preceding school year was *less than 250 pupils,* with a district or districts in which the average daily attendance was or, as a result of the unionization, uniting, consolidation, or unification, *becomes 250 or more pupils,* the regular *three-year probationary period* required of certificated employees for permanent status by Section 44882 SHALL be *deemed to have commenced* at the *beginning* of the employee's *first complete year of consecutive employment by the school district having an average daily attendance of less than 250 pupils.* Every certificated employee who has been employed for *three or more complete consecutive school years* by a district having an average daily attendance of *less than 250 pupils SHALL immediately* upon his employment in a certificated position following such unionization, unification, uniting or consolidation, *be a permanent employee.* The amendments to this section enacted by the Legislature at the 1977-78 Regular Session shall apply only to the unionization, unification, uniting or consolidation of school districts which becomes effective for all purposes on or after January 1, 1979. (Ed.C. #44903) (43)

B. Probationary Employees

- Governing boards of school districts SHALL *classify* as *probationary* employees, those persons employed in positions requiring certification qualifications for the school year, who have *not been classified as permanent employees or as substitute employees.* (Ed.C. #44915) (82, 22, 5, 103, 101)

- On or before December 1, 1984, the *governing board* of each school district SHALL, as a condition for the receipt of school apportionments from the State School fund, *adopt rules* and regulations establishing the following, and SHALL annually review the policies adopted:

  The establishment of district policies ensuring that each *probationary* certificated employee is *assigned to a school* within the district with assurances that his or her status as a new teacher and his or her *potential needs or training,* assistance, and evaluations will be recognized by the district. (Ed.C. #35160.5)

- A *probationary* employee who, in any *one school year,* has served for at least 75 *percent* of the number of days the regular schools of the district in which he is employed are maintained SHALL be *deemed to have served a complete school year.* In case of evening schools, 75 percent of the number of days the evening school of the district are in session SHALL be deemed a complete school year. (Ed.C. #44908) (60, 116, 19)

- If an employee of a school district *has served* as a *probationary* employee of the district in a position requiring *certification* qualifications, for *one complete school year,* and in the *year immediately preceding* the service as probationary employeee has served as a *substitute* employee, or as a substitute and probationary employee, serving in both capacities during the same school year in the school of the district, *at least 75 percent* of the number of days the regular schools of the district were maintained, the governing board of the district MAY *count* the *year* of employment as a *substitute* or as a substitute and probationary employee *as one year* of the probationary period which he is required by law to serve as a condition to being classified as a permanent employee of the district. (Ed.C. #44014)

Effects of District Reorganization on Classification

- The *reorganization* of any *school district* or districts SHALL NOT *affect* the *classification* of certificated employees already employed by any school district affected. If such reorganization results in the school or other place in which any such employee is employed being maintained by another district, any such employee, if a permanent employee of the district which formerly maintained such school or other place of employment, SHALL be employed as a permanent employee of the district which thereafter maintains the school or other place of employment, unless such employee elects prior to February 1 of the year in which the action will become effective for all purposes to continue in the employ of the first district. (Ed.C. #35555) (131)

- If such employee is a probationary employee of the district which formerly maintained such school or other place of employment, he or she shall be employed by the district which thereafter maintains the school or other place of employment, unless such probationary employee is terminated by such district school or other place of employment, unless such probationary employee is terminated by such district pursuant to Section 44948, 44949, or 44955, and, if not so terminated, his or her status with respect to classification by such district shall be the same as it would have been had the school or other place of employment continued to be maintained by the district which formerly maintained it. (Ed.C. #35555) (152)

- In a *district which becomes unified,* effective for all purposes on July 1, 1980, *certificated employees,* employed for the school year 1980-81, who were employed for the school year 1979-80 by a union high school district included in the territory within the *newly organized unified school district* MAY be *placed* on the *salary schedule* of the unified school district and be *given credit* for all service as an employee of the union high school district for years of experience as an employee of the union high school district. Their date of first paid service as a probationary employee MAY be the date established by the union high school district (Ed.C. #44912.1)

- In a *school district which becomes unified, effective for all purposes, on July 1, 1980, certificated employees* who are employed for the school year 1979-80 by a union high school district included in part in the territory within the *newly organized unified school district SHALL be entitled to be employed* by the unified district for the school year 1980-81 *only if* such employees were employed within the school being acquired by the unified district. However, the unified school district MAY, but is not required to, employ additional employees of the

union high school district to the extent the unified school district agrees to employ such employees. (Ed.C. #44902)

- On the *unionization, unification,* uniting, or consolidation of one or more school districts in which the *average daily attendance* for the preceding school year was *less than 250 pupils,* with a district or districts in which the average daily attendance was or, as a result of the unionization, uniting, consolidation, or unification, *becomes 250 or more pupils,* the regular *three-year probationary period* required of certificated employees for permanent status by Section 44882 SHALL be *deemed to have commenced* at the *beginning* of the employee's *first complete year of consecutive employment by the school district having an average daily attendance of less than 250 pupils.* Every certificated employee who has been employed for *three or more complete consecutive school years* by a district having an average daily attendance of *less than 250 pupils* SHALL *immediately* upon his employment in a certificated position following such unionization, unification, uniting or consolidation, *be a permanent employee.* The amendments to this section enacted by the Legislature at the 1977-78 Regular Session shall apply only to the unionization, unification, uniting or consolidation of school districts which becomes effective for all purposes on or after January 1, 1979. (Ed.C. #44903) (43)

C. Teachers Employed under Categorically Funded Programs

- The *governing board* of any school district MAY *employ* persons possessing an appropriate credential as certificated employees *in programs* and projects *to perform services* conducted *under contract* with public or private agencies, or *categorically funded projects which are not required by federal or state statutes.* The *terms* and conditions under which such persons are employed SHALL be *mutually agreed upon* by the employee and the governing board and such agreement SHALL be *reduced to writing. (Ed.C. #44909) (56)*

Conditions of Acquiring Tenure

- Service pursuant to this section SHALL NOT be *included* in *computing* the service required as a prerequisite to attainment of, or eligibility to, classification as a *permanent* employee *unless* (1) such person has *served* pursuant to this section for at least *75 percent* of the number of *days* the regular schools of the district by which he is employed are maintained and (2) such person is *subsequently employed as a probationary employee* in a position requiring certification qualifications. (Ed.C. #44909) (65, 5)

- Such persons MAY be *employed* for periods which are *less than a full school year* and MAY be *terminated* at the *expiration* of the *contract* or *specially funded project* without regard to other requirements of this code respecting the termination of probationary or permanent employees other than Section 44918. (Ed.C. #44909)

- Whenever any certificated employee in the regular educational program is assigned to a categorically funded project not required by federal or state statute and the district employs an additional credentialed person to replace that certificated employee, the replacement certificated employee SHALL be subject to the provisions of Section 44918. (Ed.C. #44909)

This section SHALL NOT be construed to apply to any regularly credentialed employee who has been employed in the regular educational programs of the school district as a probationary employee before being subsequently assigned to any one of these programs. (Ed.C. #44909)

D. Temporary Teachers

- *Nothing* in this code SHALL be *construed* as *prohibiting* the *employment* of persons in positions requiring certification qualifications for *less than a full school year in temporary schools or classes.* (Ed.C. #44852)

Substitutes

- Except as provided in Section 44920, *governing boards* of school districts SHALL *classify as substitute* employees those persons *employed* in positions requiring certification qualifications, to *fill positions of regularly employed persons absent from service.* (Ed.C. #44917) (82, 22, 103, 101, 114, 32, 77)

- After September 1, of any school year, the *governing board* of any school district MAY *employ,* for the remainder of the school year, in *substitute* status, any otherwise qualified person who consents to be so employed in *a position for which no regular employee is available,* including persons retired from service under the State Teachers' Retirement System. *Inability* to acquire the services of a qualified *regular employee* SHALL be *demonstrated* to the satisfaction of the Commission on Teacher Credentialing. (Ed.C. #44917)

Conditions of Acquiring Permanent Status

- Any person *employed* for *one complete school year* as a *temporary* employee SHALL, if *reemployed* for the *following school year* in a position requiring certification qualifications, be *classified* by the governing board as a *probationary* employee and the previous year's employment as a temporary employee shall be deemed one year's employment as a probationary employee for purposes of acquiring permanent status. (Ed.C. #44917)

75% Service by Substitute or Temporary Employees

- Any employee classified as a *substitute* or *temporary* employee, who *serves during one school year* for at least *75 percent* of the number of days the regular schools of the district were maintained in such school year and has performed the duties normally required of a certificated employee of the school district, SHALL be *deemed* to have *served a complete school year* as a *probationary* employee *if employed as a probationary employee for the following school year.* (Ed.C. #44918) (103, 5, 114, 24, 40, 158)

Reemployment

- Any such employee SHALL be *reemployed* for the *following school year* to *fill any vacant positions* in the school district for which the employee is certified and qualified to serve. (Ed.C. #44918)

- For purposes of this section, *"qualified to serve"* shall be defined to mean the possession of an *appropriate credential* plus completion of appropriate *academic preparation* or *experience* in the subject matter in which the vacant position occurs. (Ed.C. #44918)

- For purposes of this section, *"vacant position"* means a position in which the employee is qualified to serve and which is *not filled by a permanent or probationary employee.* It SHALL NOT *include* a position which *would be filled*

by a *permanent or probationary employee* except for the fact that such employee is *on leave*. (Ed.C. #44918)

- Any employee classified as a *substitute or temporary* employee who has rendered the service required to qualify under this section but *who has not been reemployed* due to a *lack of a vacant position* SHALL be *reemployed* as a *substitute or temporary employee* for the following school year. (Ed.C. #44918)

Eligibility List

- In any district in which appointments are made from eligible lists established by examination, special *eligible lists* SHALL be established at the end of each school year which consist of the names of those *employees who met the requirements of this section*. Such lists SHALL be in rank *order* based on the final *scores* established by examination. Such lists shall be *valid for at least two school years*. *Offers* for *appointments* SHALL be *made from* such special eligible *lists* established by examination; provided, however, permanent or probationary employees terminated during the preceding 39 months pursuant to Section 44955 shall be given priority in employment over persons on such special eligible lists. (Ed.C. #44918)

Employees Serving in On-Call Status

- Those employees classified as *substitutes*, and who are employed to serve in an *on-call status* to replace absent regular employees on a *day-to-day* basis SHALL NOT be *entitled* to the benefits of this section. (Ed.C. #44918)

- *Permanent* and *probationary* employees subjected to a *reduction in force* pursuant to Section 44955 SHALL, during the period of preferred right to reappointment, have *prior rights* to any vacant position in which they are qualified to serve superior to those rights hereunder afforded to temporary and substitute personnel who have become probationary employees pursuant to the provisions of this section. This section SHALL NOT apply to any school district in which the average daily attendance is in excess of 400,000. (Ed.C. #44918)

Temporary Service during the First Three Months of School Term

- Governing boards of school districts SHALL *classify* as *temporary* employees those persons requiring certification qualifications, *other than substitute employees*, who are employed to *serve from day to day* during the *first three school months* of any school term *to teach temporary classes* not to exist after the first three school months of any school term or to *perform any other duties* which *do not last longer* than the *first three school months* of any school term, or to *teach in special day and evening classes* for adults or in schools of migratory population for *not more than four school months* of any school term. *If the classes or duties continue* beyond the first three school months of any school term or four school months for special day and evening classes for adults, or schools for migratory population, the certificted employee, unless a permanent employee, SHALL be *classified* as a *probationary employee*. The school year MAY be divided into not more than two school terms for the purposes of this section. (Ed.C. #44919) (36, 8, 92, 28)

Employees Supervising Athletics

- Governing boards SHALL *classify* as *temporary* employees persons, *other than substitute* employees, who are employed to serve in a *limited assignment supervising athletic activities* of pupils; provided, such assignment SHALL first be made available to teachers presently employed by the district. Service pursuant to this subdivision SHALL NOT be *included* in *computing* the service required as a pre-

requisite to attainment of, or eligibility to, classification as a *permanent* employee of a school district. (Ed.C. #44919)

Employment Under Emergency

- In any district, the *governing board,* MAY, to prevent the stoppage of school district business when an actual emergency arises and persons are not immediately available for probationary classification, make an appointment to a position on a *temporary basis* for a period *not to exceed 20 working days.* The person so appointed SHALL be *deemed* to be a *temporary employee* who is employed to serve *from day to day.* Service by a person in such an appointment on a temporary basis SHALL NOT be *included* in *computing* the service required as a prerequisite to attainment of, or eligibility to, classification as a *permanent* employee of a school district. (Ed.C. #44919)

Replacement for Employees on Leave

- The *governing board* of a school district MAY *employ* as a teacher, for a complete school year, but not less than one semester during a school year unless the date of rendering first paid service begins during the second semester and prior to March 15th, any person holding *appropriate certification* documents, and MAY *classify* such person as a *temporary employee.* The employment of such persons SHALL be *based* upon the *need for additional certificated employees* during a particular semester, or year, *because a certificated employee* has been granted *leave* for a semester, or year, or is experiencing *long-term illness,* and SHALL be *limited,* in number of persons so employed, to that need, as determined by the governing board. (Ed.C. #44920)

Full Year Temporaries

- Any person *employed* for *one complete school year* as a *temporary employee* SHALL, *if reemployed for the following school year* in a *vacant position* requiring certification qualifications, be *classified* by the governing board as a *probationary* employee and the previous year's employment as a temporary employee shall be deemed one year's employment as a probationary employee for purposes of acquiring permanent status. (Ed.C. #44920) (5, 158)

- For purposes of this section, *"vacant position"* means a position in which the employee is *qualified to serve* and which is *not filled* by a permanent or probationary employee. It SHALL NOT include a position which would be filled by a permanent or probationary employee except for the fact that such employee is on leave. (Ed.C. #44920) (22, 5, 103, 32, 92)

First Semester Only

- The *governing board* of a unified or *high school* district MAY *employ* persons requiring certification qualifications for the *first semester only,* and classify such persons as *temporary* employees, whenever the district *expects a reduction* in student enrollment during the second semester due to students completing graduation requirements at mid-year. The number of persons so employed SHALL be limited to requirements based on the anticipated reduced enrollment as determined by the governing board. *Persons* so employed who are *continued in employment* beyond the first semseter SHALL be deemed *probationary* employees for the entire school year. (Ed.C. #44921)

- Any such employee SHALL be *reemployed* for the following semester or school year to fill any vacant positions in the school district for which the employee is certified. Preference for available positions SHALL be determined by the governing board using the method prescribed in Ed.C. Sections 44845 and 44846 (Ed.C. #44921)

- For purposes of this section, *"vacant position"* means a position in which the employee is qualified to serve and which is not filled by a permanent or probationary employee. It SHALL NOT include a position which would be filled by a permanent or probationary employee except for the fact that such employee is on leave. (Ed.C. #44921)

E. Time of Classification

- The *classification* SHALL be *made* at the *time of employment* and thereafter in the month of *July* of each school year. At the time of initial employment during each academic year, each new certificated employee of the school district SHALL receive a *written statement* indicating his employment status and the salary that he is to be paid. If a school district hires a certificated person as a *temporary employee,* the written statement shall clearly *indicate the temporary nature* of the employment and the length of time for which the person is being employed. If a written statement *does not indicate the temporary nature* of the employment, the certificated employee SHALL be *deemed* to be a *probationary employee* of the school district, unless employed with permanent status. (Ed.C. #44916) (101)

F. Reduced Work Load

- Notwithstanding any other provision, the governing board of a school district or a county superintendent of schools MAY establish regulations which *allow* their certificated *employees* to *reduce their workload* from full-time to *part-time duties.*

  The regulations SHALL include but SHALL NOT be limited to the following if the employees wish to reduce their workload and *maintain retirement benefits* pursuant to Section 22724 of this code or Section 20815 of the Government Code:

  1. The employee SHALL have reached the *age of* 55 prior to reduction in workload.

  2. The employee SHALL have been *employed full-time* in a position requiring certification for *at least 10 years* of which the immediately preceding five years were full-time employment.

  3. During the period immediately preceding a request for reduction in workload,the employee SHALL have been employed full-time in a position requiring certification for a total of *at least five years without a break in service.* For purposes of this subdivision, sabbaticals and other approved leaves of absence SHALL NOT constitute a break in service. Time spent on a sabbatical or other approved leave of absence SHALL NOT be used in computing the five-year full-time service requirement prescribed by this subdivision.

  4. The option of part-time employment *SHALL* be exercised at the *request of the employee* and can be revoked only with the mutual consent of the employer and the employee.

5. The employee SHALL be paid a *salary* which is the *prorata share* of the salary he or she would be earning had he or she not elected to exercise the option of part time employment but SHALL *retain all other rights* and benefits for which he or she makes the payments that would be required if he or she remained in full time employment.

   The employee SHALL receive *health benefits* as provided in Section 53201 of the Government Code in the same manner as a full time employee.

6. The *minimum part-time employment* SHALL be the equivalent of *one half of the number of days* of service required by the employee's contract of employment during his or her final year of service in a *full time position*.

7. This option is *limited in pre kindergarten through grade 12* to certificated employees who do not hold positions with salaries above that of a school principal.

8. The period of such part time employment SHALL NOT *exceed five years*.

9. The period of such part time employment SHALL NOT *extend* beyond the end of the school year during which the employee reaches his *70th birthday*. (Ed.C. #44992)

G. Effect of Retirement

- The *retirement* of any employee of a school district under the provisions of any retirement law SHALL *automatically effect the dismissal* of the employee from the employ of the district at the *end of the current school year*. (Ed.C. #44907)

H. Waiver of Benefits

- Except as provided in Sections 44937 and 44956, any contract or *agreement*, express or implied, made *by any employee to waive the benefits* of this chapter or any part thereof *is null and void*. (Ed.C. #44924) (56, 32, 92, 28, 23, 76)

- Notwithstanding provisions of this or any other section of this code, governing boards of school districts may employ persons in positions requiring certification qualifications on less than a full-time basis. (Ed.C. #44924) (142)

I. Teacher Interns and Assistants

- The governing board of any school district MAY *employ* any qualified person who possesses a *temporary certificate* to serve as a *teacher-assistant* in a program conducted in cooperation with a *California teacher training institution*.

Service Not Counted Toward Permanent Status

- No person SHALL be so employed unless he is enrolled as a student in a cooperating California teacher training institution at the time the service is rendered. *Service* by a person under a teacher-assistant certificate SHALL NOT be *included* in *computing* the *service* required as a prerequisite to the attainment of, or eligibility to, classification as a *permanent* employee of a school district. The governing board MAY make such *payments* as it deems proper for the services rendered. (Ed.C. #44926)

A *noncertificated student* enrolled in any public or private college or university in California MAY be *permitted* by the governing board of a school district maintaining any of grades 1 through 8, to *serve* in elementary schools or child care centers as a *non-teaching aide* under the following conditions:

1. Such service by the student is based upon a program for the *part time employment of students* established by the college or university under those provisions of the federal statute cited as the Economic Opportunity Act of 1964 (Public Law 452, of the 88th Congress), and acts amendatory thereof, which provide for federal financial grants for work study programs.

2. The *compensation* being received by the student for such services is *provided,* at least in part, by *grants* made to the college or university by the government of the *United States* for a program of the type specified in subdivision 1.

3. The *student* has been *determined* under procedures established by the Department of Education *to be free of any disability* of person or character (other than in professional competency) which would prohibit the issuance ot him of any credential or certification document provided for under this code if her were otherwise qualified therefor. (Ed.C. #44833)

- A *student* providing *services* in elementary schools or child development facilities as a *non-teaching aide* SHALL *perform no instructional work;* but SHALL, under the immediate supervision and direction of a certificated employee, *perform noninstructional work* which serves to *assist* certificated personnel in performance of teaching and administrative responsibilities. (Ed.C. #44835)

Part-Time Reader Assistant in Composition Writing and Mathematics

- The governing board of any school district MAY *employ* or engage as an *independent contractor* a qualified person to serve as *limited-term* or *part-time reader* assistant *in connection with instruction in composition and writing,* and in *mathematics,* to teachers. Any person employed as a reader SHALL NOT be deemed to be employed in a position requiring certification qualifications, and, unless otherwise determined by the governing board, SHALL NOT be subject to the provisions of Chapter 5 (commencing with Section 45100) of this part. The governing board MAY *pay* such *hourly or unit compensation rates* as it deems proper for the services rendered. (Ed.C. #44925)

J. Teacher Trainees

- The governing board of any school district maintaining grades 9 to 12, inclusive, or maintaining grades 7 and 8 in a departmentalized junior high school, MAY *employ persons* authorized by the Commission on Teacher Credentialing to *provide service as teacher trainees* to provide instruction to pupils in those grades as a classroom teacher. Prior to employing any person as a teacher trainee, the governing board SHALL certify to the commission that insufficient fully credentialed teachers are available. The governing board SHALL require that each teacher trainee be *assisted* and guided by a *certificated employee* of the school district who has been designated by the governing board as a *mentor teacher* pursuant to the provisions of Section 44490 to 44496. (Ed.C. #44803.3)

Professional Development Plan

- The governing board of each school district employing certificated teacher trainees SHALL develop and implement a *professional development plan* for each teacher trainee in consultation with an accredited institution of higher education offering an approved program of pedagogical preparation. The professional development plan SHALL include:

  1. Provisions for an annual evaluation of the teacher trainee.

  2. As the governing board determines necessary, a description of courses to be completed by the teacher trainee, if any, and a plan for the completion of preservice or other clinical training, if any, including student teaching.

  3. Any other criteria which may be required by the governing board. (Ed.C. #44803.3)

- Upon completion of two years of service, the governing board may recommend to the Commission on Teacher Credentialing that the teacher trainee be credentialed in the manner prescribed by Section 44328. (Ed.C. #44803.3)

Teacher Trainee Certificate

- The Commission on Teacher Credentialing SHALL issue *teacher trainee certificates* authorizing persons employed by any school district maintaining grades 9 to 12, inclusive, or maintaining grades 7 and 8 in a departmentalized junior high school, to provide classroom instruction to pupils in those grades. Each teacher trainee certificate SHALL be *valid* for a period of *two years* upon the recommendation of the governing board of the school district, the commission MAY grant a one-year extension of the teacher trainee certificate. (Ed.C. #44325)

- The *minimum qualifications* for that certificate include the possession of a *baccalaureate degree* and the successful passage of the state basic skills *proficiency* test in addition to the *appropriate subject matter examination* administered by the commission for the subject areas in which the teacher trainee is aut' orized to teach. The commission shall apply the requirements of Sections 44339 (good character), 44340 (Identification cards), and 44341 (Securing Information) to each applicant for a teacher trainee certificate. (Ed.C. #44325)

- Persons holding teacher trainee certificates issued by the commission SHALL only be *authorized* to teach in the *subject areas* in which they completed an undergraduate academic *major* or *minor* and SHALL be *required* to teach with the assistance and guidance of *certificated employees* of the district who have been classified as *mentor teachers*. (Ed.C. #44326)

- Unless the commission determines that substantial evidence exists that a person is unqualified to teach, upon the successful *completion of two years* of successful service as a *teacher trainee,* and upon the recommendation of the school district governing board, the commission SHALL *award credentials* to teacher trainees in the same manner as applicants recommended for credentials by institutions that operate approved programs of professional preparation. (Ed.C. #44328)

K. Mentor Teachers

Qualifications

- A person seeking classification as a mentor teacher SHALL meet each of the following qualifications:

  1. Is a *credentialed* classroom teacher with *permanent* status.

  2. Has *substantial recent experience* in classroom instruction.

  3. Has demonstrated exemplary teaching ability, as indicated by, among other things, effective communication skills, subject matter knowledge, and mastery of a range of teaching strategies necessary to meet the needs of pupils in different contexts. (Ed.C. #44491)

$4,000 Annual Stipend

- On or before September 1 of each year, participating school districts which receive funding SHALL allocate no less than *four thousand dollars ($4,000)* to provide each qualified mentor with an *additional annual stipend* over and above the regular salary to which he or she is entitled. The amount of the annual stipend SHALL be four thousand dollars ($4,000) for a full school year of service as a mentor, or a pro rata share of that amount for less than a full school year of service as a mentor. This stipend SHALL NOT be counted as salary or wages for purposes of calculating employer contribution rates or employee benefits under the State Teachers' Retirement System. (Ed.C. #44494)

- A mentor may propose that the district allocate all or part of the stipend for his or her professional growth or release time.

- The governing board may designate certificated employees as mentor teachers and pay these persons the additional annual stipend for a period not to exceed *three consecutive school years*. Upon completing three years as a mentor teacher, an individual may be reviewed and renominated. The subject of participation by a school district or an individual certificated classroom teacher in a mentor teacher program SHALL NOT be *included* within the scope of representation in collective bargaining among a public school employer and eligible employee organizations. (Ed.C. #44494)

Selection Procedures

- The *selection procedures* for the designation of certificated classroom teachers as mentor teachers SHALL at a minimum, provide for the following.

  a. A *selection committee* SHALL be established to *nominate* candidates for selection as mentor teachers. The *majority* of the committee SHALL be composed of certificated classroom teachers chosen to serve on the committee by other certificated classroom teachers. The remainder of the committee SHALL be composed of *school administrators*, chosen to serve on the committee by other school administrators. The governing board of a participating school district SHALL consider including *parents, pupils*, or other public representatives in the selection process, and MAY, at its option, include such persons.

  b. Candidates for mentor teacher SHALL be *nominated* by the *majority vote* of the selection committee.

c. The selection process SHALL include provisions for *classroom observation* of candidates by administrators and classroom teachers employed by the district.

d. The final designation of any person as a mentor teacher SHALL be by action of the governing board of the school district from persons nominated. The governing board MAY reject any nominations. (Ed.C. #44495)

Duties of Mentor Teachers

- Persons designated as *mentor teachers* pursuant to this article SHALL be *assigned* duties and responsibilities in accordance with the following:

  1. The *primary function* of a mentor teacher SHALL be to *provide assistance* and *guidance* to *new teachers*. A mentor teacher MAY also provide assistance and guidance to more experienced teachers.

  2. Mentor teachers MAY provide staff development for teachers and MAY *develop special curriculum.*

  3. A mentor teacher SHALL NOT participate in the *evaluation* of teachers. (Ed.C. #44496)

- No administrative or pupil personnel services credential SHALL be required of any mentor teacher. Each mentor teacher SHALL spend, on the average, not less than 60 percent of his or her time in the direct instruction of pupils. For the purposes of determining administrator-teacher ratios, mentors shall be considered full-time teachers (Ed.C. #44496)

III. Salaries

A. Placement on Salary Scale

Minimum Teacher Salaries

- Effective July 1, 1970, each person employed by a district in a position requiring certification qualifications except a person employed in a position requiring administrative or supervisory credentials, SHALL be *classified on the salary schedule* on the basis of *uniform allowance of years of training* and *years of experience*. Employess SHALL NOT be placed in different classifications on the schedule, nor *paid different salaries,* solely on the basis of the respective *grade levels* in which such employees serve. (Ed.C. #45028) (137, 138)

- a. The *governing board* of any school district may, in the 1983-84, 1984-85, or 1985-86 fiscal years, *increase,* for teachers meeting the requirements specified herein, the *salary* on its adopted certificated employee salary schedule for the then current fiscal year as specified in subdivision (b). For purposes of this section, any *teacher* for whom the governing board may increase salaries SHALL meet all of the following criteria:

  1. Hold a *valid California teaching credential.*

  2. *Possess a baccalureate* or higher degree.

  3. Receive a salary paid from the *general fund* of the district. (Ed.C. 45023.4).

b. The governing board SHALL perform the following computations:

1. The governing board SHALL compute an amount equal to the amount of the *lowest salary* on the salary schedule for a certificated employee meeting the criteria in subdivision (a) for the then current fiscal year *multiplied by 1.10* but not to exceed an annual salary of eighteen thousand dollars *($18,000)* in the 1983-84 school year, adjusted in the 1984-85 and 1985-86 school years by the same percentage increase made in base revenue limits for a unified school district with over 1,500 units of average daily attendance.

2. The governing board SHALL *increase* to the amount computed in paragraph (1) the salary of any certificated *employee meeting the criteria* in subdivision (a) whose *salary* on the salary schedule for the then current fiscal year is less than the amount computed in paragraph (1). (Ed.C. #45023.4)

c. Each school district which increases salaries pursuant to subdivision (b)shall receive reimbursement for the cost of the increase. (See Education Code for formula)

d. A school district shall receive reimbursement pursuant to subdivision (c) only if it certifies to the Superintendent of Public Instruction that the increase of teachers' salaries pursuant to this section does not require the district to increase the salaries of other teachers. (Ed.C. #45023.4)

- In no case SHALL the governing board of a school district *draw orders* for the *salary* of any teacher in violation of this section, nor SHALL any superintendent draw any requisition for the salary of any teacher in violation thereof. (Ed.C. #45028)

- This section SHALL NOT *apply* to teachers of *special* day and evening *classes* in elementary schools, teachers of special classes for elementary pupils, teachers of special day and evening high school classes and *substitute* teachers. (Ed.C. #45028) (104, 90)

B. Requirement of Proper Certification Document

- *No order for a warrant,* and no warrant drawn pursuant to Section 42647, SHALL be *drawn* in favor of any person employed in a *position requiring certification qualifications, unless* such peson is at the time the *holder of a proper certification document* in full force for the full time for which the requisition or warrant, as the case may be, is drawn, and *on file or registered* as required by law at the time and unless he is employed by the governing board of the unified school district, or district with over 10,000 average daily attendance or by the county superintendent of schools as provided in this code. (Ed.C. #45034)

- If any school *district fails* to *pay* the salary of any person employed by it in a position requiring certification qualifications who has on file a contract of employment held valid by the legal adviser of the county superintendent of schools having jurisdiction over the district, such *county superintendent of*

schools MAY *transfer sufficient money* from the funds of the district to the county school service fund and *pay such salary* from such fund. (Ed.C. #45035)

C. Payments

- The *governing board* of any school district MAY arrange to *pay* the persons in positions requiring certification qualifications employed by it, or any one or more of such employees or one or more groups or catagories of such employees, in either *10 or 11 or 12 equal payments* instead of *by the school month.* (Ed.C. #45038)

- In lieu thereof, orders for the *payment of salary,* and payroll orders for the payment of salary and warrants for the payment of salary of employees employed in positions requiring certification qualifications MAY be drawn *once each two weeks, twice a month, or once each four weeks* as determined by the governing board. (Ed.C. #45038)

- Where the governing board of any school district arranges to pay persons employed by it in *12 equal payments* for the year, it MAY pay each monthly installment at the *end of each calendar month,* whether or not the persons are actually engaged in teaching during the month. (Ed.C. #45039)

- *No contract* with any *insurer* or other *employee welfare benefit provider* SHALL be *approved or renewed* if an administrative employee of a school district, or any employee organization, or any employee or agent thereof, has a *direct financial interest* in any plan or program which is being approved or renewed. The provisions of this section SHALL NOT apply to any employee welfare benefit fund jointly administered by one or more employers and one or more employee organizations or to any employee welfare benefit fund established by the school district for the purpose of self insuring. (Ed.C. #44039.5)

- As used in this section, *"direct financial interest" means* the receipt of or entitlement to a *commission, fee,* or other *remuneration,* including the payment of fees for administrative services rendered on behalf of such plans. (Ed.C. #44039.5)

- The *governing board* of any school district *not paying the annual salaries* of persons employed by the district *in 12 equal montly payments* MAY *withhold* from each payment made to each employee an amount equal to *16-2/3 percent* thereof. (Ed.C. #45040)

- The total of the *amounts deducted* from the salary of any employee during any school year SHALL be *paid to him* in *two equal installments,* one installment to be paid not later than the fifth day of August next succeeding, and one installment to be paid not later than the fifth day of September next succeeding. (Ed.C. #45040)

- In the event any employee *leaves the service* of the district by death or otherwise before receiving such moneys as may be due him, the *amount due him SHALL be paid* within 30 days to him or to any other person entitled thereto by law. (Ed.C. #45040)

Service for Less than a Year Pro Rata Pay

- A person in a position requiring certification qualifications who *serves less than a full school year* SHALL *receive* as *salary* only an *amount* that bears the *same ratio* to the established annual salary for the position as the *number of working days he serves bears to the total number of working days* plus institutes in the annual school term, and any other day when the employee is required by the governing board to be present at the schools of the district. (Ed.C. #45041) (75)

- Notwithstanding any provisions of this section to the contrary, a person in a position requiring certification qualifications who *serves a complete semester* SHALL *receive not less than one-half* of the established annual salary for the position. This section SHALL NOT be so construed as to *prevent* the *payment* of compensation to a person while on *leave of absence* when the payment of the compensation is authorized by law. (Ed.C. #45041)

- In the event any such person dies during the school year, his *estate* SHALL be *entitled* to *receive,* as *salary owed* to the decedent, an amount that bears the same *ratio* to the established annual salary for the position as the number of *working days he served* bears to the total number of working days plus institutes in the annual school term, and any other day when the employee was required by the governing board to be present at the schools of the district, *less any salary paid* to the decedent prior to his death. (Ed.C. #45041)

Alternative Computation Subtract Substitute's Pay

- Notwithstanding the provisions of Section 45041, the governing board of a school district MAY *adopt* an *alternative method* of *computing* the salary received by a person requiring certification qualifications who *serves less than a full school year.* (Ed.C. #45042)

- Such method SHALL *include* the *deduction* from the employee's regular salary of only that *amount actually paid to a substitute* or, if a substitute is not employed, the amount which would have been paid to a substitute had a substitute been employed. (Ed.C. #45042)

- For the purposes of this section, the amount which would have been paid to a *substitute* is that amount established by the district in a *published salary schedule* for substitute employees. (Ed.C. #45042)

- Such alternative method SHALL only be *applied* upon *authorization by the school board* based upon *individual employee application* and SHALL be *limited* to *no more than five days* per school year for each employee. (Ed.C. #45042)

- Notwithstanding the provisions of Section 45041 or any other provision of law to the contrary, if a person is *employed* by a school district in a position requiring certification qualifications at the *beginning of the second semester* of a school year for services during that semester, the *compensation* of such employee SHALL be *not less than one-half of the annual compensation* for that position. (Ed.C. #45043)

Salary Increase in Second Semester

- Whenever a *salary schedule* increasing the salaries of its certificated employees is *adopted* by a school district to be effective at the commencement of the *second semester* of a school year:

1. The *compensation* of such employees SHALL NOT *exceed one-half* of the *annual compensation* for their positions under the *former* salary schedule for services during the *first semester*.

2. The *compensation* of such employees SHALL NOT *be less* than *one-half* of the *annual compensation* for their positions under the *newly adopted salary schedule* for services during the *second semester*. (Ed.C. #45044)

- For the purposes of Military and Veterans Code Section 395 or any other provision of law providing for the payment of salary or compensation as such employee to an employee of a school district while *absent from duty* because *engaged in ordered military or naval duty*, his *salary* or compensation as such employee *for 30 days* SHALL (a) with respect to an employee serving in a position requiring *certification qualifications* be deemed to be *one-tenth of the annual salary* established for such position and (b) with respect to an employee serving in a position *not requiring certification qualifications* be deemed to be *one month's salary*. (Ed.C. #45059)

Salary under Temporary Disability

- Any school *employee* of a school district who is *absent* because of *injury or illness* which arose out of and *in the course of* the person's employment and for which the person is *receiving temporary disability* benefits under the *workers' compensation* laws of this state, SHALL NOT be *entitled* to *receive wages or salary* from the district which, when *added to the temporary disability benefits*, will *exceed a full day's wages* or salary. (Ed.C. #44043)

- During such periods of temporary disability *so long* as the employee has *available* for the employee's use *sick leave, vacation, compensating time off or other paid leave of absence* the district SHALL *require* that *temporary disability checks* be *endorsed payable to the district*. The district SHALL then cause the employee to receive the person's *normal wage or salary less appropriate deductions* including but not limited to employee retirement contributions. (Ed.C. #44043)

- When *sick leave*, vacation, compensating time off or other available paid leave is *used in conjunction with temporary disability benefits* derived from workers' compensation, as provided in this section, it SHALL be *reduced only* in that *amount necessary* to *provide a full day's wage* or salary when added to the temporary disability benefits. (Ed.C. #44043)

- Notwithstanding the provisions of Sections 44043, 44984, and 45192, a *school district* MAY *waive* the *requirement* that temporary *disability checks* be *endorsed payable to the district*, and MAY in lieu thereof, permit the employee to retain his temporary disability check, providing that notice be given to the district that such check has been delivered to the employee. In such cases, the *district* SHALL then *cause the employee* to *receive* his *normal wage* or salary *less appropriate deductions, including* but not limited to, employee retirement contributions, and an *amount equivalent to* the face *amount* of the temporary *disability check*, which the employee has been permitted to retain. In all cases, employee *benefits* are to be *computed* on the basis of the employee's *regular wage* or salary prior to the deduction of any amounts for temporary disability payments. (Ed.C. #44044)

- Nothing contained herein shall be deemed to in any way diminish those rights and benefits which are granted to a school employee pursuant to the provisions of Sections 44043, 44984, and 45192. (Ed.C. #44044)

Time of Payment

- Each salary *payment* for any calendar month MAY be *made* on the *last working day of the month* and SHALL be *paid not earlier than the last working day of the month* and *not later than the fifth day of the succeeding calendar month* except that teachers employed for less than full time in classes for adults, in a day or evening high school, or in a special day or evening class maintained in connection with an elementary school SHALL be paid on or before the 10th day of the succeeding calendar month for services performed during the preceding calendar month. (Ed.C. #45048)

- If the school district provides for the payment of the salary of employees employed in positions requiring certification qualifications *once each two weeks, twice a month, or once each four weeks,* pursuant to Section 45038, each salary *payment* MAY be *made* on the *last working day* of the payroll period and SHALL be made *not earlier* than the *last working day* of the payroll period and *not later* than the *eighth working day* of the following payroll period. (Ed.C. #45048)

- This section SHALL NOT *prohibit* a school district from making a *payment* of *earned salary prior to the last working day* of the month or payroll period. (Ed.C. #45048)

- When any school district employs a certificated employee to perform teaching or *other services in addition* to his regular teaching duties, or when a school district employs a certificated employee to perform teaching or other services at a *summer school* maintained by the district, the district SHALL *pay* the employee for such services *either* in one *lump sum* or at an *hourly, daily, bi-weekly, quadri-weekly, or monthly rate of pay.* If the pay is in one *lump sum,* the district SHALL *pay* the employee *within 10 days* after the termination of the services. If the pay is at an hourly, daily, bi-weekly, quadri-weekly, or monthly rate, the district SHALL *pay* the employee *within 10 days* after the end of each calendar month or pay period during which the services are performed. (Ed.C. #45049)

D. Withholding of Payment

End-of-Year Reports

- The *salary payment due* a certificated employee for his *last month of service* in any district during any fiscal year SHALL NOT be *approved* by the county superintendent of schools *until all reports* required from the employee have been *filed* with the superintendent. Such payment SHALL be *made within 10 calendar days* after the filing of all such report if after the regular payday or the last month of service. (Ed.C. #45057)

- Whenever *reports* are *required* to be *filed* with the county superintendent of schools by certificated employees of districts authorized to issue warrants under the provision of Section 42647 and such reports *have not been filed,* the county superintendent of schools MAY direct the district in writing to *withhold the salary* payment due the certificated employee involved. Said payment should not be released to the certificated employee until directed in writing by the county superintendent of schools. (Ed.C. #45058)

E. Deductions

Employee Organization Dues

- Except as provided in Ed.C.#45061, the *governing board* of each school district, when drawing an order for the salary payment due to a certificated employee of the district, *shall with or without charge reduce the order* by the amount which it has been requested in a revocable written authorization by the employee to *deduct* for the purpose of *paying the dues of the employee for membership* in any local *professional organization* or in any statewide professional organization, or in any other professional organization affiliated or otherwise connected with a statewide professional organization which authorizes the statewide organization to receive membership dues on its behalf and for the purpose of paying his or her pro rata share of the costs incurred by the district in making the deduction. *No charge* SHALL *exceed* the *actual cost to the district* of the dues deduction. Any *revocation* of a written authorization SHALL be in *writing* and SHALL be *effective* commencing with the next pay period. (Ed.C. #45060)

- Unless otherwise provided in a negotiated agreement, the governing board SHALL, no later than the 10th day of each pay period for certificted employees, *draw its order* upon the funds of the district *in favor of the organization designated by the employee* for an amount equal to the total of the *dues deductions* made with respect to that organization for the previous pay period and SHALL *transmit* the total amount to that organization *no later than the 15th day of each pay period* for certificated employees. When timely transmittal of dues payments by a county is necessary for a school district to comply with the provisions of this section, the county SHALL act in a timley manner. If the employees of a district do not authorize the board to make a deduction to pay their pro rata share of the costs of making deductions for the payment of dues, the board SHALL deduct from the amount transmitted to the organization on whose account the dues payments were deducted from the actual costs of making the deduction. (Ed.C. #45060)

Written Authorization for Deduction

- The revocable written *authorization* SHALL *remain in effect* until *expressly revoked in writing* by the employee. Whenever there is a *change in the amount* required for the payment to the organization, the *employee organization* SHALL *provide the employee* with adequate and necessary *data* on the change at a time sufficiently prior to the effective date of the change to allow the employee an opportunity to revoke the written authorization, if desired. The *employee organization* SHALL *provide the public school employer* with *notification of the change* at a time sufficiently prior to the effective date of the change to allow the employer an opportunity to make the necessary adjustments and with a copy of the notification of the change which has been sent to all concerned employees. (Ed.C. #45060)

- The governing board SHALL NOT *require* the completion of a *new deduction authorization* when a *dues change* has been effected or at any other time without the express approval of the concerned employee organization. (Ed.C. #45060)

- The governing board of each school district when drawing an order for the salary or wage payment due to a certificated employee of the district SHALL, with or without charge, reduce the order for the payment of service fees to the certified or recognized organization as required by an organizational security

arrangement between the exclusive representative and a public school employer as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. However, the organization security *arrangement* SHALL *provide* that *any employee MAY pay* service fees *directly* to the certified or recognized employee organization in lieu of having such service fees deducted from the salary or wage order. (Ed.C. #45061)

District Charging Actual Cost of Making Deductions

- If the employees of a district do not authorize the board to make a deduction to pay their pro rata share of the costs of making deductions for the payments of service fees to the certificated or recognized organization, the board SHALL *deduct* from the amount transmitted to the organization on whose account the payments were deducted the *actual costs*, if any, of making the deduction. No charge SHALL exceed the actual cost to the district of the deduction. These actual costs SHALL be determined by the board and SHALL include startup and ongoing costs. (Ed.C. #45061)

Other Deductions

- The *governing board* of each school district when drawing an order for the salary payment due to employees of the district SHALL, *without charge*, reduce the order by the amount which it has been requested in a revocable written authorization by the employee to *deduct* for any or all of the *following purposes*: participating in a *deferred compensation program* offered by the school district which provides for investments in corporate stocks, bonds, securities, mutual funds, or annuities, except as prohibited by the Constitution, or paying *premiums on any policy* or certificate of group *life insurance* for the benefit of the employee or for group *disability insurance*, or *legal expense insurance*, or any of them, for the benefit of the employee or his dependents issued by an admitted insurer on a form or policy or certificate approved by the Insurance Commissioner, or paying rates, dues, fees, or other periodic charges on any *hospital service contract* for the benefit of the employee, or his dependents, issued by an authorized nonprofit hospital service corporation on a form approved by the Insurance Commissioner, or paying periodic charges on any *medical and hospital service agreement* or contract for the benefit of the employee or his dependents, issued by an authorized nonprofit corporation, or paying periodic charges on any *legal services contract* for the benefit of the employee, or his dependents, issued by an authorized nonprofit corporation. (Ed.C. #44041)

- The *governing board* of the district SHALL, beginning with the month designated by the employee and each month thereafter until authorization for the deduction is revoked, *draw its order* upon the funds of the district in *favor of the insurer* which has issued the policies of certificates or in favor of the *nonprofit hospital service* corporation which has issued hospital service contracts, or in favor of the nonprofit corporation which has issued medical and hospital service or legal service agreements or contracts, *for an amount equal to the total of the respective deductions* therefor made during the month. The governing board MAY require that the employee submit his authorization for the deduction up to one month in advance of the effective date of coverage. (Ed.C. #44041)

- *"Group insurance"*, as used in this section, SHALL *mean* only a bona fide *group program of life or disability insurance* where a *master contract is held by the school district* of an employee organization but it SHALL, nevertheless, include annuity programs authorized by Section 403(b) of the Internal Revenue Code when approved by the governing board. (Ed.C. #44041)

- School districts MAY, but shall not be required to, *provide payroll deduction* for the *collection of insurance premiums* except as expressly authorized by Section 44041. (Ed.C. #44042)

IV. Teachers' Duties, Rights and Evaluation

A. Teachers' Duties

- To use authorized *textbooks*. (Ed.C. #44805) (See #60001 et seq.) (124)
- To enforce the *course of study* prescribed. (Ed.C. #44805) (See #51220 et seq. + 51050 et seq.)
- To enforce the *rules* and regulations prescribed. (Ed.C. #44805) (See #1241) (45)
- To impress pupils with *principles* of morality, truth, justice, partiotism, kindness to living creatures, manners. (Ed.C. #44806) (See #51530, 51500, 44932, 87732) (14, 50)
- To hold *pupils* to a strict account for their *conduct* on the way to and from school, on the playgrounds, or during recess, using the same degree of physical control over a pupil that a parent would be legally privileged to exercise. (Ed.C. #44807) (See #49000, 49001, 48900) (54, 130, 100, 67)
- To make an *annual report* to his principal at the close of school (elementary school teachers). (Ed.C. #44816)
- To keep a *school register*, recording absence and attendance of pupils enrolled in the teacher's class (elementary). (Ed.C. #44809)
- *Failure* to make *reports* required by law is a misdemeanor, punishable by fine of not more than $100. (Ed.C. #44030)

Reporting Assaults

- *Failure* of a school district employee to *report to law enforcement authorities* that he has been attacked, *assaulted* or menaced by any pupil, or has knowledge of such an incident, is a misdemeanor punishable by a fine of not more than $200. (Ed.C. #44014)
- *Compliance* with *district* board *procedures* relating to the reporting of such incidents SHALL NOT *exempt* a person under a duty to make the report from making it to law enforcement authorities. (Ed.C. #44014)
- Neither the governing board of a school district, a member of a governing board, a county superintendent of schools, nor an employee of a school district or of the office of any county superintendent of schools SHALL *impose* any *sanctions* against a person under a duty to make the prescribed report, *for making* such a *report. (Ed.C. #44014)*
- A member of the *governing board* of a school district, a county *superintendent* of schools, or any *employee* of any school district or the office of the county superintendent of schools, SHALL NOT directly or indirectly *inhibit or impede the*

making of the report by a person under a duty to make such a report. Such an act to inhibit or impede the making of such a report shall be a *misdemeanor* punishable by a fine of not less than $100 or more than $200. (Ed.C. #44014)

- The governing board MAY *direct* any *employee* to *attend* any convention or *conference* or to *visit schools* for the discussion or observation of any school matter related to the employee's duties of to any question of interest to the school district. (Ed.C. #44032)

- A single-session kindergarten class SHALL meet all of the following criteria:

  (a) The class is maintained for a minimum of 180 minutes per schoolday.

  (b) The kindergarten class teacher is assigned to only one session of kindergarten daily as principal teacher.

  (c) The kindergarten teacher is a full-time certificated employee.

  (d) The *kindergarten teacher* SHALL be *available* for assistance or *assignment* in the instructional program of the *primary grades* when not involved in the kindergarten program. (Ed.C. #46118)

B. Teachers' Rights

Payment of Expenses

- The governing board of any school district SHALL provide for the *payment* of the *actual* and necessary expenses, including *travel expenses*, of any *employee* of the district, incurred in the course of *performing services* for the *district*, under the direction of the governing board. (Ed.C. #44032) (63, 128)

- The board MAY authorize an *advance* of funds to cover such necessary expense. Such advance SHALL be *repaid* or adjusted upon *filing* of a regular *claim* for the actual and necessary expenses incurred. (Ed.C. #44032)

- The board MAY provide for *reimbursement* of employees for the *use of automobiles owned by the employees* and used in the performance of regularly assigned duties, by establishing an allowance for such use on a mileage or monthly basis. (Ed.C. #44033)

- The board MAY use school district funds for *cash deposits*, when required to *guarantee payment* for *transportation* purchased on *credit* for school district employees or other representatives who are directed by the board to travel on school district business. (Ed.C. #44038)

Duty-Free Lunch Period

- The governing board of every school district SHALL *allow* each *teacher* employed for full time in any regular day school, one *duty-free lunch period* each day, in accordance with the state board of education's rules fixing the duration, time of day, and conditions for the duty free lunch period. (Ed.C. #44813)

- The board MAY utilize *recreation personnel* or other suitable persons to supervise the pupils of the district during the school lunch period. (Ed.C. #44814)

- The board MAY also utilize *non certificated persons* to supervise the pupils during any *breakfast period* or other nutrition period. (Ed.C. #44815)

- The board MAY adopt reasonable rules and regulations to *authorize* a *teacher* to *restrict* for disciplinary purposes the time a pupil is allowed for *recess*. (Ed.C. #44807.5)

Interference with School Discipline, Activities, etc. — Penalties

- Every minor over 16 years of age or adult, who is not a pupil of the school, including but not limited to any such minor or adult who is the parent or guardian of a pupil of the school, who *comes upon any school ground* or into any schoolhouse and there willfully *interferes with the discipline*, good order, lawful conduct, or administration of any school class or activity of the school, with the *intent to disrupt, obstruct, or to inflict damage* to property or bodily injury upon any person, is *guilty of a misdemeanor*, and is punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail for not more than six months, or both. (Ed.C. #44810)

- Every parent, guardian, or other person who upbraids, insults, or abuses any teacher of the public schools, in the presence or hearing of a pupil, is guilty of a misdemeanor. (Ed.C. #44811) (148)

- Any parent, guardian, or other person who *insults or abuses any teacher* in the presence of other school personnel or pupils and at a place which is *on school* premises or public sidewalks, streets, or other public ways adjacent to school premises or at some other place if the teacher is required to be at such other place in connection with assigned school activities is *guilty of a misdemeanor*, and is punishable by a fine of not less than one hundred dollars ($100) nor exceeding one thousand dollars ($1,000). (Ed.C. #44812)

Appearance Before School Board

- It shall be *unlawful* for any person authorized to invoke disciplinary action against any employee of a school district or employee in the office of the county superintendent of schools either in his individual capacity or as a member of any board, to invoke or attempt *to invoke disciplinary action against* any such *employee* or to *discriminate against such employee* in terms, conditions, and privileges of employment solely *because of the employee's appearance before the governing board of a school district*, the county board of education, legislative committees, or any other duly constituted governmental board, commission or council, whether such appearance was undertaken voluntarily or otherwise. *Violation* of the provisions of this section shall be a *misdemeanor*. *(Ed.C. #44040)*

- A school district MAY *pay* the *surviving spouse* of any *employee* who is *murdered* while in the course of his employment the amount the deceased would have received if he had lived to complete the time remaining in his contract with the district. (Ed.C. #44017)

C. Evaluation of Teachers

- Each school district governing board SHALL *establish a system of evaluation and assessment* of the *performance* of all certificated personnel within the school

district, by *adopting objective* evaluation and assessment *guidelines*. This requirement does not apply to certificated personnel employed on an hourly basis in adult education classes. (Ed.C. #44660) (53, 110, 85)

- In the development and adoption of guidelines and procedures for evaluation, the governing board SHALL avail itself of the *advice* of the certificated instructional personnel in the district's *organization of certificated* personnel. (Ed.C. #44661) (25)

- On or before December 1, 1984, the *governing board* of each school district SHALL, as a condition for the receipt of school apportionments from the State School fund, *adopt rules* and regulations establishing school district policies as they related to the following, and SHALL annually review the policies adopted:

Certification of Evaluators

a. Certification that *personnel assigned to evaluate teachers* have demonstrated *competence* in instructional methodologies and *evaluation* for teachers they are asigned to evaluate. The determination of whether school personnel meet the district's *adopted policies SHALL be made by the governing board*. (Ed.C. #35160.5)

Parental Complaints

b. The establishment of policies and procedures which *parents* or guardians of pupils enrolled in the district may use to *present complaints* regarding employees of the district. These policies and procedures SHALL provide for appropriate mechanisms to respond to and where possible to resolve, the complaints. (Ed.C. #35160.5)

- The governing board of each school district SHALL *establish standards of expected pupil achievement* at each grade level in each area of study. (Ed.C. #44662) (25)

Evaluation of Certificated Employees

- The board shall *evaluate* and assess *certificated employee competency* as it relates to:

  1. The *progress of students* toward the established standards.

  2. The instructional techniques and strategies used by the employee.

  3. The employee's adherence to curricular objectives.

  4. The establishment and *maintenance* of a *suitable learning environment* within the scope of the employee's responsibilities. (Ed.C. #44662) (25)

- The board SHALL establish and *define job responsibilities* for those *certificated noninstructional personnel*, including supervisory and administrative personnel, whose responsibilities cannot be evaluated appropriately under the above provisions; and SHALL *evaluate* and assess their *competency* as it reasonably relates to the fulfillment of those responsibilities. (Ed.C. #44662)

- The *evaluation* and assessment of certificated employee competence SHALL *NOT include* the use of publishers' norms established by *standardized tests*. *(Ed.C. #44662)*

- Nothing in this section shall be construed as in any way *limiting* the authority of the board to *develop* and adopt *additional* evaluation and assessment *guidelines*. (Ed.C. #44662)

- *Evaluation* and assessment made pursuant to this article SHALL be *reduced to writing* and a *copy* thereof SHALL be *transmitted to the certificated employee* not later than 30 days before the last scheduled school day for the school year in which the evaluation takes place. The *employee* SHALL have the *right* to initiate a *written response* to the evaluation. Such response SHALL become a *permanent attachment* to the employee's *personnel file*. Before the last scheduled school day for the school year, a *meeting* SHALL be held between the employee and the evaluator *to discuss the evaluation*. (Ed.C. #44663) (40)

Frequency of Evaluation

- *Evaluation* and assessment of the performance of each certificated employee SHALL be made on a continuing basis at least *once each school year for probationary personnel*, and at least *every other year for permanent personnel*. (Ed.C. #44664) (53, 110, 85)

- The *evaluation* SHALL *include recommendtions*, if necessary, as to areas of *improvement* in the performance of the employee. (Ed.C. #44664)

- In the event an *employee* is *not performing* his duties in a *satisfactory manner* according to the standards prescribed by the governing board, the employing authority SHALL *notify* the employee *in writing* of such fact and *describe* such *unsatisfactory performance*. The employing authority SHALL thereafter *confer with* the *employee* making specific *recommendations* as to areas of improvement in the employee's performance and endeavor to *assist* him in such performance. When any *permanent certificated* employee has received an unsatisfactory evaluation, the employing authority SHALL *annually evaluate* the employee until the employee achieves positive evaluation or is separated from the district. (Ed.C. #44664) (53, 110, 85)

- Any evaluation containing an unsatisfactory rating of an employee's performance in the area of teaching methods or instruction MAY include the requirement that the certificated employee SHALL, as determined necessary by the employing authority, participate in a program designed to improve appropriate area of the employee's performance and to further pupil achievement and the instructional objectives of the employing authority. (Ed.C. #44664)

- *Hourly* and *temporary* hourly *certificated employees* and *substitute teachers* MAY be *excluded* from the provisions of this section at the discretion of the governing board. (Ed.C. #44664)

V. Leaves of Absence

A. Judicial Appearance

- The school district governing board MAY grant leaves of absence to *employees* to appear as a *witness* in court. (Ed.C. #44036a.)

- The school district governing board MAY grant leaves of absence to employees in positions requiring *certification*, for *jury duty*. (Ed.C. #44036b.) (159)

- The school district governing board MAY grant such leaves of absence *with pay*, up to amount of the difference between regular earnings and amount received for jury or witness fees. (Ed.C. #44036c.) (159)

- The school district governing board SHALL grant such leaves of absence to employees in positions *not requiring certification*, for jury duty. (Ed.C. #44037) (159)

- The governing board SHALL grant such leave *with pay* up to the amount of the difference between the employee's regular earnings and the amount he receives as juror's fees. (Ed.C. #44037)

- It is UNLAWFUL for the governing board or personnel commission of any school district to adopt or maintain any rule, regulation, or *policy* to encourage employees to *seek exemption* from jury duty. (Ed.C. #44037)

- In *individual cases*, the district superintendent or his agent MAY discuss with an employee the practicality of seeking *exemption* when acceptance would tend to materially *disrupt the district's operation*. (Ed.C. #44037)

B. Serving as Elected Officer

- The school district governing board SHALL grant a leave of absence to a permanent certificated employee *elected to the Legislature*, holding office on or after January 4, 1965. Such employee MAY perform less than full-time service requiring certification qualifications, for the school district, for compensation. (Ed.C. #44801)

- Such employee SHALL be *entitled to return* to his position within six months after his term of office expires. (Ed.C. #44801)

- A person employed to *take the place* of any such employee shall *not* have any right to such position following the employee's return. (Ed.C. #44801)

Public Employee Organization

- The school district governing board SHALL grant to any employee, upon request, a *leave of absence without loss of compensation* for the purpose of enabling such employee to serve as an elected officer of any *statewide public employee organization, national* organization with which such statewide organization is affiliated, or *local* school district public employee organization which is affiliated with such state or national organizations. (Ed.C. #44987)

- Such leave SHALL include, but is not limited to, absence for purposes of attendance by the employee at periodic, stated, *special, or regular meetings* of the body of such organization on which such employee serves as an officer. *Compensation* during such leave SHALL *include retirement fund* contributions required of the school district as employer. The required employer contribution rate SHALL be the contribution rate for additional service credit less the member contribution rate prescribed by Section 22804. The employee SHALL earn full service credit during such leave of absence and SHALL pay member contribution rate SHALL earn full service credit during such leave of absence and SHALL pay member contributions as prescribed by Section 22804. The maximum amount of

such service credit earned SHALL NOT exceed eight calendar years. Any such employee who serves as a full-time officer of a public employee organization SHALL NOT be *eligible for disability benefits* under the State Teachers' Retirement System while on such a leave of absence. (Ed.C. #44987)

- Following the school district's payment of the employee for such leave of absence, the school *district* SHALL be *reimbursed* by the employee organization of which the employee is an elected officer for all compensation paid the employee on account of such leave. Reimbursement by the employee organization SHALL be made *within 10 days* after its receipt of compensation to the employee. (Ed.C. #44987)

- The leave of absence without loss of compensation provided for by this section is *in addition to* the released time without loss of compensation granted to *representatives of an exclusive representative* by subdivision (c) of Section 3543.1 of the Government Code. (Ed.C. #44987)

- For purposes of this section, "school district" also means "county superintendent of schools." (Ed.C.#44987)

- An employee who *after August 31, 1978,* was absent on account of elected-officer service SHALL *receive full service* credit in the State Teachers' *Retirement System;* provided that, not later than April 30, 1981: (1) the employee makes a *written request* to the employer for a *leave of absence* for the period of such elected-officer service, and (2) the *employee organization* of which the employee is an elected officer *pays to the employee's school district* an amount equal to the required State Teachers' Retirement System member and employer retirement contributions, as prescribed by this section. (Ed.C. #44987)

- The school district, following such written request and payment, SHALL transmit the amount received to the State Teachers' Retirement System, informing it of the period of the employee's leave of absence. The State Teachers' Retirement System SHALL credit the employee with all service credit earned for the period of such elected-officer leave of absence. (Ed.C. #44987)

- In the event that the employee has been compensated by the school district for the period of such service, then as a condition to the employee's entitlement to service credit for such service, then, as a condition to the employee's entitlement to service credit for such period, the school district SHALL be *reimbursed by the employee organization* for the amount of such compensation. The provisions of this subdivision shall apply retroactively to all service as an elective officer in a public employee organization occurring after August 31, 1978. (Ed.C. #44987)

- (a) The governing board of a school district SHALL *grant* to any employee, upon request, a *leave of absence without loss of any compensation* for the purpose of enabling such employee to *serve* on any of the following *boards,* commissions, committees, or groups, so long as the requirements of subdivision (b) are satisfied:

  (1) Advisory Commission on Special Education.

  (2) Advisory Committee for Child Care.

(3) California Advisory Council on Vocational Education.

(4) California Commission on Crime Control and Violence Prevention.

(5) Curriculum Development and Supplemental Materials Commission.

(6) Educational Innovation and Planning Commission.

(7) Educational Management and Evaluation Commission.

(8) Equal Educational Opportunities Commission.

(9) Instructional Television Advisory Commission.

(10) State Council of Educational Planning and Coordination.

(11) Any other group, commission, or board authorized by statute; or commission or board, any of whose members are appointed by the Governor or the State Board of Education; whose purposes and activities are to further public education, exclusive of the Commission on Teacher Credentialing.

- (b) A leave of absence SHALL NOT be *granted unless* all the following requirements are satisfied:

  (1) Service is performed in the State of California.

  (2) The *board* commission, committee, or group, in writing, *informs* the employee's *district* of such service.

  (3) The *board* commission, committee, or group *agrees*, prior to service, to *reimburse* the school district pursuant to subdivision (d).

- (c) The leave of absence SHALL be *limited to 20 school days per school year.*

- (d) Following the school district's payment of the employee for such leave of absence, the school *district SHALL be reimbursed* by the board, commission, committee, or group which the employee serves for the compensation paid to the employee's substitute and for actual administrative costs related to the leave of absence granted to the employee under this section, upon written request for such reimbursement by the school district. *Reimbursement* by the board, commission, committee, or group SHALL be made within 10 days after its receipt of the school district's certification of payment of compensation to the employee and of payment of compensation to the employee's substitute.

- (e) The leave of absence without loss of compensation provided for by this section is in addition to the release time without loss of compensation granted to representatives of an exclusive representative by subdivision (c) of Section 3543.1 of the Government Code and the leave of absence granted employees by Section 44987.

- (f) As used in this section, "school district" also means a county superintendent of schools. (Ed.C. #44987.3)

C. Military Service

- A probationary or permanent certificated employee SHALL be *entitled to absent himself* from his duties as an employee of the school district, to serve in the active *military service* of the United States of America or of the State of California, or the United States Merchant Marine, or in full-time paid service of the American Red Cross, during *war* or *national emergency*. (Ed.C. #44800)

- Such employee SHALL be *entitled to return* to his position within six months after he honorably leaves such service or is placed on inactive duty. (Ed.C. #44800)

D. Powers of District

- School district governing boards MAY grant leaves of absence to persons employed in positions requiring certification qualifications. (Ed.C. #44962) (106, 102, 46)

- Such leaves of absence MAY be granted to such employees for purposes and times other than those expressly authorized or required by the Education Code. (Ed.C. #44963) (143)

- School district governing board MAY grant leave of absence and MAY grant compensation to a certificated employee, in case of accident, illness, or quarantine, whether or not the cause is employement-related. (Ed.C. #44964) (109, 16, 60, 75)

E. Pregnancy

- School district governing boards SHALL grant leaves of absence to certificated employees for *pregnancy*, miscarriage, childbirth, and recovery therefrom, for a length of time to be determined by the employee and the employee's physician. (Ed.C. #44965)

- *Disability* due to pregnancy, miscarriage, childbirth, and recovery therefrom SHALL be treated the *same as other temporary disabilities*, for all job-related purposes, including insurance, sick leave plans, employment policies and practices, and the granting of leave with pay. (Ed.C. #44965)

- *Leave with pay* during pregnancy, miscarriage, and childbirth is required ONLY if necessary in order to treat such leave the same as leaves for illness, injury, and disability. (Ed.C. #44965) (6, 41)

- *Mandatory leaves* for pregnancy, and *mandatory notice* of pregnancy, if unreasonable, will be *voided* as unconstitutional. (72, 27)

F. Study and Travel

- School district governing board MAY grant to certificated employees, a leave of absence not to exceed one year, for the purpose of permitting *study or travel* by the employee which will *benefit the schools* and pupils of the district. The leave may be in separate six-month periods or separate quarters, but must be completed within a 3-year period. (Ed.C. #44966) (60, 12)

- *Time qualifications:* At least seven consecutive years of service preceding the granting of the leave. Not more than one such leave in each seven-year period. (Ed.C. #44967)

- The period of such leave of absence *shall not be included* as service in computing the seven consecutive years of service required, and shall be deemed a *break* in the *continuity* of service, except that service under a *national recognized fellowship* or foundation approved by the State Board of Education, for a period of not more than one year, for research, teaching, or lecturing, shall not be deemed a break in continuity of service, and the period of such absence shall be included in computing the seven consecutive years of service required. (Ed.C. #44967)

- Employee MAY be required to *perform* such *services*, during leave of absence for study and travel, as the governing board and the employee may *agree* upon in writing. (Ed.C. #44968)

Compensation

- The employee SHALL receive such *compensation* during the period of the leave as the governing board and the employee may agree upon in writing, but the compensation *SHALL not be less* than the difference between the salary of the employee on leave and the salary of a substitute employee in the position which the employee held prior to the granting of the leave. (Ed.C. #44968) (106)

- The governing board MAY pay the employee on leave any amount up to and including his *full salary*. (Ed.C. #44968)

- The employee MAY *agree in writing not* to receive *compensation* during the period of the leave. (Ed.C. #44968.5)

Agreement to Return

- Every employee, as a condition to being granted a leave of absence for study or travel, SHALL agree in writing to *return to the service* of the school district after such leave, for a period equal to *twice the period of the leave*. (Ed.C. #44969)

- If the employee was on leave for *less than one year*, he MAY be *paid* the compensation granted for the leave period *during the first year* of service following his return from leave. (Ed.C. #44969)

- If the employee was on leave for *one year*, such compensation MAY be paid in two equal annual installments *during the first two years* of service following his return from leave. (Ed.C. #44969)

- Compensation SHALL be paid the employee while on leave of absence, in the *same manner as if he were teaching* in the district, if he furnishes a suitable *bond*

indemnifying the district against loss in the event that he fails to return to the service of the district for the agreed-upon period, after the leave of absence. (Bond exonerated by death or physical or mental disability of employee.) (Ed.C. #44969)

- The governing board MAY, by resolution, *waive* the furnishing of the *bond* and pay the employee on leave in the same manner as though a bond were furnished. (Ed.C. #44969)

- If the employee *does not serve* for the *entire period* agreed upon, the amount of compensation paid for the leave of absence SHALL be *reduced* by an amount which bears the same *proportion* to the total compensation as the amount of time which was not served bears to the total amount of time agreed upon. If the employee furnished an indemnity *bond,* upon default, the proceeds of the bond SHALL be divided proportionately between the employee and the school district. (Ed.C. #44970)

- If a unified *school district* which includes a community college is *reorganized* so that a *community college district is formed* in addition to the unified school district, an employee who takes his leave from the unified school district before the reorganization may satisfy the two years' service requirement by serving for two years in either the community college district or the unified school district, as they exist after the reorganization, or in both. (Ed.C. #44971)

G. Reinstatement

- At the *expiration* of the leave of absence of the employee, he SHALL, unless he otherwise agrees, *be reinstated* in the position held by him at the time of the granting of the leave of absence. (Ed.C. #44973) (3, 118)

- At the expiration of *court-ordered leave* of absence, in lieu of dismissal for *mental incompetence,* the statute providing for reinstatement of the teacher in the absence of his agreement not to be reinstated, requires the *school board* to prove continued mental incompetence to prevent reinstatement, rather than requiring the employee to prove competence. (95)

H. District Liability During Leave of Absence

- The governing board and the district SHALL *not be liable* for the payment of any compensation or damages provided by law for the death or injury of any employee of the district, when the death or injury occurs *while* a certificated employee is *on any leave of absence* granted under the provisions of Education Code Sections 44962, including leaves for illness or accident, pregnancy and childbirth, and travel or study. (Ed.C. #44974)

I. Probationary Employees

- Probationary employee's leave of absence SHALL NOT be construed as a *break in the continuity* of service required for permanent classification, but the time during which the leave of absence is taken SHALL NOT be considered as *employment time.* (Ed.C. #44975)

J. Employee Rights in Inter-District Transfer

- When any school or other place of employment is transferred from one district to another, any *certificated* employees who transfer with it SHALL be entitled to *retain* all *sickness* and *injury, sabbatical* and other *leave rights* accumulated by service prior to the transfer. (Ed.C. #44976)

K. Sick Leave Provisions

- Every certificated employee employed five days a week by a school district SHALL be entitled to *10 days'* leave of absence for *illness* or *injury,* and such additional days as the governing boards MAY allow with full pay, for a school year of service. A certificated employee employed for less than five days a week SHALL be entitled, for a school year of service, to a proportionate number of days' leave of absence for illness or injury, and to such additional days as the governing board may allow. (Ed.C. #44978) (60, 75)

- *Pay* for any day of such absence SHALL be the *same* as the pay which would have been received if the employee had served during that day. (Ed.C. #44978)

- *Credit* for leave of absence *need not be accrued* prior to taking such leave by the employee and such leave may be taken at any time during the school year. (Ed.C. #44978)

- If the employee does not take the full amount of leave allowed in any school year under this section, the *amount not taken SHALL be accumulated* from year to year with such additional days as the governing board may allow. (Ed.C. #44978)

- The governing board of each school district SHALL *adopt rules and regulations* requiring and prescribing the manner of *proof* of illness or injury for the purposes of this section. Such rules and regulations SHALL NOT *discriminate* against evidence of treatment and the need therefor by the practice of the *religion* of any well-recognized church or denomination. (Ed.C. #44978) (97, 143)

- Any employee SHALL have the right to utilize sick leave provided for in this section, and the benefit provided by Section 44977, for absences necessitated by *pregnancy,* miscarriage, and childbirth, and recovery therefrom. (Ed.C. #44978) (41)

- The governing board of a school district MAY adopt rules permitting certificated employees of the district to use leave earned pursuant to Section 44978 (sick leave) in cases of *compelling personal importance.* Such leave, together with any leave taken pursuant to Section 44981 (leave for personal necessity) SHALL NOT exceed *six days* in any single school year. (Ed.C. #44978.5) (97, 143)

L. Transfer of Accumulated Sick Leave

- Any *certificated employee* of any school district who has been an employee of that district for *one school year or more,* who *accepts* a certificated *position* in *another school district* during the second or any succeeding school year of his employment with the first district (or within the school year succeeding the

school year in which such employment is terminated) SHALL have *transferred* with him to the second district the total amount of *leave of absence for illness or injury* to which he is entitled under Ed.C. #44978. (Ed.C. #44979)

- The State Board of Education SHALL *adopt rules* and regulations prescribing the manner in which the *first district* SHALL *certify* to the *second district* the total *amount of leave* of absence for illness or injury to be transferred. (Ed.C.#44979)

- NO governing board SHALL *adopt* any *policy* or rule, written or unwritten, which requires any certificated employee transferring to its district to *waive* any part or all of the leave of absence which he may be entitled to have transferred. (Ed.C. #44979)

- Accumulated leave of absence for illness or injury SHALL be tranferred with the employee to his new position in the same manner as above in the case of any:

- certificated employee of any *school distict who accepts a certificated position in the office* of any county *superintendent of schools,*

- certificated employee of any county *superintendent of schools* who accepts a certificated position in a *school district* or office of *another* county *superintendent of schools,*

- person employed by the *State Department of Education* in a certificated position or employee of the office of the *Chancellor of the California Community Colleges* who accepts a certificated position in any *school district* or office of any county *superintendent of schools,*

- certificated employee of the *Commission for Teacher Preparation and Licensing* who accepts a certificated position in any *school district* or office of any county *superintendent of schools.* (Ed.C. #44980)

- Any person employed by a *school district* or by a county *superintendent of schools* in a certificated position, who accepts a permanent *professional education position* in the *Department of Education,* SHALL have transferred with him his accumulated leave of absence for illness or injury, in the same manner as provided above in Ed.C. #44979, *except* in no case may the transferred accumulated sick leave exceed the amount of accumulated sick leave that the person would have earned as an employee in the system to which he is transferring. (Ed.C. #44982)

M. Personal Necessity Leave

- Any days of *Sick leave* allowed pursuant to Ed.C. #44978 *MAY be used* by the employee, at his election, in cases of *personal necessity.* (Ed.C. #44981) (97, 108, 20, 143)

- The *governing board* of each school district and each office of county superintendent of schools SHALL *adopt rules* and regulations requiring and prescribing the *manner of proof* of personal necessity. (Ed.C. #44981) (20, 127)

- The employee shall not be required to secure *advance permission* for leave taken for any of the following reasons:

  a. *death* or *serious illness* of a member of his immediate family.

  b. *accident* involving his person or property, or the person or property of a member of his immediate family. (Ed.C. #44981) (127)

- No such accumulated leave in excess of *six days* may be used in any *school year* for purposes of personal necessity. (Ed.C. #44981)

N. Extended Sick Leave (5 Months)

- When a person employed in a certificated position is *absent* on account of *illness* or *accident* for a period of *five school months or less*, whether or not the absence arises out of or in the course of employment, the *amount deducted* from the salary due him for any month in which the absence occurs *SHALL NOT exceed the* sum which is *actually paid a substitute* employee to fill his position during his absence or, if no substitute was employed, the amount which would have been paid to the substitute had one been employed. (Ed.C. #44977) (60, 75, 121, 120, 122, 144, 149)

- The school district SHALL make every reasonable effort to *secure* the *services* of a *substitute* employee. (Ed. C. #44977)

- The governing board of every school district SHALL *adopt a salary schedule* for *substitute* employees. The salary schedule shall indicate a salary for a substitute for all categories or classes of certificated employees of the district. (Ed.C. #44977)

- Except in a district where a salary schedule for substitutes has been adopted, the *amount paid* the *substitute* employee during any month SHALL be *less than* the *salary due the employee* absent from his duties. (Ed.C. #44977) (123)

- The extended sick leave deduction provisions of Section 44977 *SHALL NOT apply* to any school *district* which *adopts* and maintains in effect a *rule* which provides that when a person employed in a certificated position is absent on account of illness or accident for five school months or less, he *shall receive 50 percent or more of his regular salary* during the period of such absence, and *nothing* in Section 44977 shall be *construed* as *preventing* the governing board of any district from adopting any *such rule*. (Ed.C #44983)

Over Five Months

- When a person employed in a certificated position is *absent* from his duties on account of illness for *more than five months*, or when a person is absent from his duties for a *cause other than illness*, the amount deducted from the salary due him for the month in which the absence occurs SHALL be *determined* according to the *rules* and regulations established by the governing board of the district. Such rules and regulations SHALL NOT conflict with rules and regulations of the State Board of Education. (Ed.C #44977)

- Nothing in this section shall be construed so as to deprive any district of the right to make any reasonable rule for the regulation of accident or sick leave *without*

loss of salary for certificated employees. (Ed.C #44977)

- These extended sick leave provisions may be *utilized for* absence due to *pregnancy*, miscarriage, childbirth, and recovery therefrom. (Ed.C #44978) (120)

- These extended sick leave *deductions* SHALL NOT apply to the *first ten days* (or proportions thereof for less than full-time employees) of sick leave. (Ed.C #44978)

O. Industrial Accident and Illness

- Governing boards of school districts SHALL *provide* by *rules* and *regulations* for industrial accident and illness *leaves of absence* for all *certificated* employees. (Ed.C #44984)

- Such rules and regulations SHALL include the following provisions:

  a. Allowable leave SHALL be not less than *60 days* in any one fiscal year for the same accident.

  b. Allowable leave SHALL *NOT* be *accumulated* from year to year.

  c. Such leave SHALL *commence* on the *first day of absence*.

  d. During such leave the employee SHALL be *paid* the *portion* of his *salary* that, when *added to* his *temporary disability indemnity* under Division 4 and 4.5 of the Labor Code, will result in a payment to him of *not more than his "full salary"* (not less than his "average weekly earning"). (132)

  e. Industrial accident and illness leave SHALL be *reduced* by one day for each day of authorized absence regardless of a temporary disability indemnity award.

  f. When an industrial accident leave *overlaps* into the *next fiscal year*, the employee SHALL be entitled *only* to the amount of *unused leave* due him for the same illness or injury. (Ed.C #44984)

- When such *leave terminates*, the employee shall be entitled to the *benefits* provided in #44977, 44978 and 44983. For the purposes of these sections, his *absence* shall be deemed to have *commenced* on the date of *temrination of the industrial or illness leave*. (Ed.C #44984)

- If the employee continues to *receive temporary disability indemnity*, he MAY *elect* to take as much as when added to his temporary disability indemnity will result in a payment to him of *not more than his full salary*. (Ed.C #44984)

- The governing board MAY, by rule or regulation, provide for such *additional leave* of absence for industrial accident or illness as it deems appropriate.

- During any paid leave of absence, the employee MAY *endorse to the district* the *temporary disability indemnity checks* received on account of his industrial

accident or illness. The district SHALL *issue* the employee appropriate salary *warrants* for payment of the employee's salary and SHALL *deduct* normal *retirement*, other authorized contributions, and any temporary disability indemnity paid to and retained by the employee. (Ed.C #44984)

- Any employee receiving benefits as a result of this section SHALL, during periods of injury or illness, *remain within* the State of *California* unless the governing board authorizes travel outside the state. (Ed.C #44984)

- If a governing board *has not adopted rules* and regulations pursuant to this section, an employee SHALL be entitled to industrial accident or illness leave as provided in this section, but *without limitation* as to the number of days of such leave. (Ed.C #44984)

P. Bereavement

- Every person employed by a school district in a certificated position is *entitled* to a *leave of absence*, not to exceed *three days*, or *five days* if out of state travel is required, on account of the death of any member of his *immediate family*. (Ed.C #44985)

- *No deduction* SHALL be made from the *salary* of such employee, NOR SHALL such *leave* be *deducted* from leave granted by other sections of the code or provided by the governing board of the district. (Ed.C #44985)

- Members of the *immediate family*, as used in this section, means the mother, father, grandmother, grandfather, or grandchild of the employee or of the spouse of the employee, and the spouse, son, son-in-law, daughter, daughter-in-law, brother, or sister of the employee, or any relative living in the immediate household of the employee. (Ed.C #44985)

- The governing board MAY *enlarge* the *benefits* of this section and MAY expand the class of relatives listed as members of the immediate family. (Ed.C #44985)

Q. Disability

- The governing board of a school district SHALL *grant* a *leave of absence* to any certificated employee who has *applied* for *disability* allowance, not to exceed 30 days beyond final determination of the disability allowance by the State Teacher's Retirement System. (Ed.C #44986)

- If the employee is *determined* to be *eligible* for the disability allowance by the system, such *leave* SHALL be *extended* for the term of disability, but not more than 39 months from the date of approval of the disability allowance. (Ed.C #44986)

- Governing boards SHALL *classify* as *temporary employees*, those persons employed to *fill vacancies* caused by the absence of permanent certificated employees receiving a disability or insurance allowance or benefit from the system or from a group insurance plan for which the employer is paying the cost or deducting the cost from the employees' salaries. (Ed.C #44986)

- For purposes of this section, the *term of employment* of the temporary employee SHALL be equal to the number of *days of absence* of the employee receiving the disability allowance. If the term of employment *extends* beyond this period, the employee SHALL be credited for all days served as a *probationary employee*. (Ed.C #44986)

- This section SHALL remain in effect only until January 1, 1989, and as of such date is repealed, unless later extended by statute. (Ed.C #44986)

VI. Dismissal/Demotion Notice Dates

March 15

- Unless a certificated *employee holding* a position requiring an *administrative or supervisory credential* is sent written notice deposited in the United States registered mail with postage prepaid and addressed to his last known address *by March 15* that he may be *released* from his position for the following school year, he SHALL be *continued in such position*. (Ed.C #44951) (10, 31)

March 1 for Principals

- The *provisions* of this section *do not apply* to a certificated employee who holds a written *contract* with an expiration date beyond the current school year, or to a certificated employee holding a position that is funded for less than a school year, or to a certificated employee assigned to an acting position whose continuing right to hold this position depends on his being selected from an eligible list established for the position, or to the termination of employment pursuant to Section 44955. A certificated employee serving under Section 35042 (a principal) SHALL be *notified by March 1* if the governing board determines on an individual basis that he may be *released* for the following school year. (Ed.C #44951) (146, 147)

VII. Revocation of Credentials

A. Non-fulfillment of Contract

- Should any certificated *employee* of a school district *refuse*, without good cause, to *fulfill a valid contract* of employment with the district, or *leave* the *service* of the district *without* the *consent* of the superintendent or the governing board, the *Commision on Teacher* Credentialing SHALL, after proof of such fact is made to it, *suspend* the employee's credentials issued by the Commission for not more than *one* year. (Ed.C #44420) (39)

- After the first suspension, if such credentials again become subject to suspension, the Commission MAY suspend the credentials for not more than *two years*. (Ed.C #44420)

B. Immoral or Unprofessional Conduct

- The *Commission on Teacher Credentialing* SHALL *privately admonish, revoke* or *suspend* the credentials of a certificated employee for *immoral* or *unprofessional conduct*, or for persistent *defiance* and refusal to obey the *laws* regulating the duties of persons serving in the public school system, or for any cause which would have warranted the denial of an application for a credential or the renewal thereof, or for evident *unfitness for service*. (Ed.C #44421) (86, 30, 4, 87, 94, 49, 14)

- The commission SHALL revoke the credential of anyone who knowingly reports false expenditures related to any educational program. (Ed.C #44421.5)

- Whenever the holder of any credential issued by the State Board of Education or the Commission for Teacher Preparation and licensing is *charged* with *immoral* or *unprofessional conduct, unfitness* or *disobedience*, the Commission, after *notifying* the person charged, MAY *require* the *county board of education* to give notice of and *conduct* a *hearing* in the manner prescribed by law for the hearing of charges for private admonition, or for the revocation or suspension of a certificate by the county board of education. (Ed.C #44422)

- The county board of education, after the hearing, SHALL *report to the Commission* its *findings*, and a summary of the evidence, and shall *make* a definite *recommendation* concerning the revocation and suspension of the credential. (Ed.C #44422)

- Upon receipt of a copy of the findings, summary of evidence, and recommendation, the *Commission* MAY privately admonish the holder of the credential, or *suspend* or *revoke* the credential for the causes stated, or order the charges *dismissed*. (Ed.C #44422)

Revocation or Suspension of Credentials

- *County boards of education* MAY *revoke* OR *suspend*, for *immoral* or *unprofessional conduct*, evident *unfitness* for teaching, or persistent *defiance of*, and refusal to obey the *laws* regulating the duties of, teachers, the certificates granted by them. (Ed.C #44427) (For procedure, see #44428-44432)

- If any *teacher* employed by a board of school trustees for a specified time, *leaves* the school before the expiration of the time, *without the consent* of the trustees, in writing, the teacher is guilty of *unprofessional conduct*, and the *board of education of the county*, upon receiving notice of the fact, MAY *suspend* the certificate of the teacher for the period of *one year*. (Ed.C #44433) (39)

- Each *city or city and county board of examination* MAY for *immoral* and *unprofessional conduct, profanity, intemperance*, or evident unfitness for teaching, *recommend* to the city or city and county board of education the *revocation* of any certificate previously granted by the board of education in the city or city and county. (Ed.C #44434) (70)

Private Admonition

- Private admonition

  (a) *"Private admonition," is a warning*, in writing, to the applicant or credential holder that states in ordinary and concise language the act or omission of the applicant or credential holder and further states that repetition of such act or ommission may result in denial, suspension, or revocation of the credential.

  (b) The private admonition SHALL be *included in* the applicant's or credential holder's *file* maintained by the Commission on Teacher Credentialing.

  (c) The applicant's or credential holder's *employer* at the time of admonition SHALL *receive a copy* of the admonition and SHALL NOT make such copy

accessible or *disclose* the contents thereof, unless the applicant or credential holder consents, in writing, thereto.

(d) For purposes of Chapter 3.5 (commencing with Section 6250) of Division 7 of title 1 of the Government Code, the private admonition is deemed a personnel record within the meaning of subdivision (c) of Section 6254 of the Government Code.

(e) All *records* of the private admonition SHALL be *expunged* from the files after *3 years*, if there is no recurrence of the offense. (Ed.C #44438)

C. Dismissals for Certain Crimes and Offenses

- If an employee is *dismissed* for *immoral conduct* or *conviction of a felony* or crime involving *moral turpitude*, the *governing board* SHALL *transmit* to the *State Board of Education* and to the *County Board of Education* which issued the certificate under which the employee was serving at the time of his dismissal, a *copy* of the reporter's transcript of the hearing accompanied by a *request* that any *certificate* issued by the county Board of Education to the employee be *revoked* if the employee is not reinstated upon appeal. (Ed.C #44947)

- Upon the becoming *final* of the *conviction* of the holder of any credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing of a violation, or attempted violation, of any one or more of Penal Code Section 187 to 191, 192, insofar as said section relates to voluntary manslaughter, 193, 194 to 232, both inclusive, 244, 245, 261 to 267, both inclusive, 273a, 273f, 273g, 278, 285 to 288a, both inclusive, 424, 425, 484 to 488, both inclusive, insofar as said sections relate to felony convictions, 503 and 504, or of Penal Code Section 272, the commission SHALL forthwith *revoke* the credential. (Ed.C #44424) (37)

Sex Offense

- "Sex offense" as used in Sections 44346, 44425, 44436, 44836, 45123 and 45304 means any one or more of the offenses listed below:

  a. Any offense defined in Section 261.5, 266, 267, 285, 286, 288, 288a, 647a, subdivision 1, 2, 3 or 4 of Section 261, or subdivision (a) or (d) of Section 647 of the Penal Code.

  b. Any offense defined in former subdivision 5 of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision 2 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in such sections was *committed prior to September 15, 1961*, to the same extent that such an offense committed prior to such date was a sex offense for the purposes of this section prior to September 15, 1961.

  c. Any offense defined in Section 314 of the Penal Code *committed on or after September 15, 1961.*

  d. Any offense defined in former subdivision 1 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 *committed on or after September 7, 1955*, and *prior to September 15, 1961.*

e. Any offense involving *lewd and lascivious conduct* under Section 272 of the Penal Code *committed on or after September 15, 1961.*

f. Any offense involving *lewd and lascivious conduct* under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if such offense was *committed prior to September 15, 1961,* to the same extent that such an offense committed prior to such date was a sex offense for the purposes of this section prior to September 15, 1961.

g. Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975-76 Regular Session of the Legislature committed prior to the effective date of the amendment.

h. Any attempt to commit any of the above-mentioned offenses. (Ed.C. #44010)

Narcotics Offense

- *"Narcotics offense"* as used in Sections 44346, 44425, 44436, and 45123 means any one or more of the following offenses:

  a. Any offense in Sections 11350 to 11355, inclusive, 11366, 11368, and 11550 of the Health and Safety Code.

  b. Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the above-mentioned offenses.

  c. Any offense committed under former Sections 11500 to 11503, inclusive, 11557, 11715, and 11721 of the Health and Safety Code.

  d. Any attempt to commit any of the above-mentioned offenses. (Ed.C. #44011)

- Whenever the holder of any credential issued by the State Board of Education, or the Commission on Teacher Credentialing has been *convicted* of any *sex offense* as defined in Section 44010 or *narcotics offense* as defined in Section 44011, the commission SHALL *forthwith suspend the credential.* If the conviction is *reversed* and the holder is *acquitted* of the offense in a new trial or the charges against him are *dismissed,* the commission SHALL forthwith *terminate the suspension* of the credential. When the conviction becomes final or when imposition of sentence is suspended, the commission SHALL forthwith *revoke* the credential. (Ed.C. #44425) (14, 37, 96, 125)

Suspension or Revocation Of Credential

- Whenever the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing has been *determined* to be a *sexual psychopath* under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state, the commission SHALL *forthwith suspend the credential.* If the determination is *reversed* and the holder is determined not to be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is *dismissed,* the commission SHALL forthwith *terminate the suspension* of the credential. When the determination becomes *final,* the commission SHALL forthwith *revoke* the credential. (Ed.C. #44426)

- Upon the becoming *final* of the conviction of the holder of a certificate issued by a county board of education of a *violation* or attempted violation of any one or more of Penal Code Sections 187 to 191, 192 insofar as said section relates to *voluntary manslaughter,* 193, 194 to 232, inclusive, 244, 245, 261 to 267, inclusive, 273a, 273f, 273g, 278, 285 to 288a, both inclusive, 424, 425, 484 to 488, both inclusive, insofar as said sections relate to *grand theft,* 503 and 504, or of Penal Code Section 272, the county board of education SHALL forthwith *revoke* the certificate. (Ed.C. #44435)

Sexual Psychopath

- Whenever the holder of a certificate issued by a county board of education has been *convicted* of any *sex offense* as defined in Section 44010, or *narcotics offense* as defined in Section 44011, the county board of education SHALL *forthwith suspend the certificate.* If the conviction is *reversed* and the holder is *acquitted* of the offense in a new trial or the charges against him are dismissed, the board SHALL forthwith *terminate* the suspension of the certificate. When the conviction becomes *final* or when imposition of sentence is suspended the board SHALL forthwith *revoke* the certificate. (Ed.C. #44436) (14, 37, 96, 125)

- Whenever the holder of a certificate issued by a county board of education had been *determined* to be a *sexual psychopath* under the provisions of Article 1 (commencing with Section 6300), Chapter 2, Part 2, Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state, the county board of education SHALL *forthwith suspend the certificate.* If the determination is *reversed* and the holder is determined not to be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is dismissed, the board SHALL forthwith *terminate the suspension* of the certificate. When the determination becomes *final,* the board SHALL forthwith *revoke* the certificate. (Ed.C. #44437)

VIII. Dismissals, Layoffs, Suspensions, Resignations

A. Permanent Employees

- *No* permanent employee SHALL be *dismissed* except for one or more of the following *causes:*

  1. *Immoral* or *unprofessional conduct.*

  2. Commission, aiding, or advocating the commission of acts of *criminal syndicalism,* as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof.

  3. *Dishonesty.*

  4. *Incompetency.*

  5. Evident *unfitness* for service.

  6. Physical or mental condition *unfitting* him to *instruct* or *associate* with *children.*

7. Persistent *violation* of or *refusal to obey the school laws* of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him.

8. *Conviction of a felony* or of any crime involving *moral turpitude*.

9. Violation of Section 51530 of this code or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.

10. Violation of any provision in Sections 7001 to 7007, inclusive, of this code (Communist Party membership).

11. Knowing membership by the employee in the Communist Party.

12. Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children. (Ed.C. #44932) (110, 93, 51, 76, 14, 13, 134, 153, 157, 161)

Suspension Without Pay

- The governing board of a school district MAY *suspend without pay* for a specific period of time on grounds of *unprofessional conduct* a *permanent* certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a *probationary* employee, pursuant to the procedures specified in Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944. This authorization SHALL NOT *apply* to any school district which has adopted a *collective bargaining agreement* pursuant to subdivision (b) of Section 3543.2 of the Government Code. (Ed.C. #44932) (153, 157)

Dismissal or Suspension

- A *permanent* employee MAY be *dismissed* or *suspended* on grounds of *unprofessional conduct* consisting of acts or omissions other than those specified in Section 44932, but any such charge SHALL specify instances of behavior deemed to constitute unprofessional conduct. This section SHALL also apply to the suspension of *probationary* employees in a school district with an average daily attendance of less than 250 pupils. (Ed.C. #44933)

Filing Charges

- Upon the *filing of written charges,* duly signed and verified by the person signing them, with the governing board of the school district, or upon a *written statement of charges* formulated by the governing board, charging that there exists *cause,* as specified in #44932 or 44933, *for the dismissal* of a permanent employee of the district, the governing board MAY, upon majority vote, *give notice* to the permanent employee of *its intention to dismiss or suspend* him or her at the expiration of *30 days* from the date of service of the notice, *unless the employee demands a hearing* as provided in this article. (Ed.C. #44934)

- Suspension proceedings MAY be initiated pursuant to this section only if the governing board has not adopted a *collective bargaining agreement* pursuant to subdivision (b) of Section 3543.2 of the Government Code. (Ed.C. #44934) (93, 119)

- Any written statement of charges of *unprofessional conduct* or *incompetency* SHALL *specify instances of behavior* and the acts or omissions *constituting the charge* so that the teacher will be able to prepare his defense. It SHALL, where

applicable, *state* the *statutes and rules* which the teacher is alleged to have violated, but it SHALL also set forth the *facts* relevant to each occasion of alleged unprofessional conduct or incompetency.

- This section SHALL also apply to the suspension of *probationary* employees in a school district with an average daily attendance of less than 250 pupils which has *not* adopted a *collective bargaining agreement* pursuant to subdivision (b) of Section 3542.2 of the Government Code. (Ed.C. #44934)

Teacher's Opportunity to Comment

- *No report* on the *fitness* of a teacher in a dismissal or suspension proceeding initiated pursuant to Section 44934 SHALL be received *from a statewide professional organization* by a governing board unless the *teacher* shall have been given, prior to the preparation of the report in its final form, the *opportunity to submit in writing* his or her *comments on the report* and unless a copy of the report in final form is given to the teacher investigated at least 10 days prior to its submission to the board. (Ed.C. #44935)

- Such a report SHALL NOT be *distributed* other than to the governing board and those persons participating in its preparation, unless a teacher does not demand a hearing as provided by Section 44937. (Ed.C. #44935)

- The *notice* SHALL NOT be given *between May 15th and September 15th in any year.* It SHALL be in *writing* and be served upon the employee personally or by United States registered mail addressed to him at his last known address. A copy of the charges filed, containing the information required by Section 11503 of the Government Code, together with a copy of the provisions of this article, SHALL be attached to the notice. (Ed.C. #44936) (13)

- In a *dismissal or suspension* proceeding initiated pursuant to Section 44934, if the *employee does not demand a hearing* by filing a *written request* for hearing with the governing board, he or she MAY be dismissed or suspended without pay for a specific period of time at the expiration of the 30-day period. (Ed.C. #44937)

45 Days Notice for Correcting Unprofessional Conduct

- The governing board of any school district SHALL NOT act upon any *charges of of unprofessional conduct* unless at least *45 calendar days prior* to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed *written notice* of the unprofessional conduct, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an *opportunity to correct his or her faults and overcome the grounds for such charge. The written notice SHALL include* the *evaluation* made pursuant to Section 44660, if applicable to the employee. The governing board of any school district SHALL NOT act upon any charges of incompetency unless it acts in accordance with the following provisions:

90 Days Notice for Correcting Incompetency

(1) At least *90 calendar days* prior to the date of filing, the board or its authorized representative has given the employee against whom the charge is filed, *written notice* of the incompetency, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an *opportunity to correct* his or her faults and overcome the

grounds for the charge. The written notice shall include the evaluation made pursuant to Section 44660, if applicable to the employee. (110)

(2) The governing board MAY act during the time period composed of the *last one-fourth* of the school days it has scheduled for purposes of computing apportionments in any fiscal year if, prior to the beginning of that time period, the board or its authorized representative has given the employee against whom the charge is filed, *written notice* of the incompetency, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice SHALL include the evaluation made pursuant to Section 44660, if applicable to the employee. (Ed.C. #44938)

- *"Incompetency"* as used in this section means, and refers only to, the incompetency particularly specified as a cause for dismissal in Section 44932 and does not include any other cause for dismissal specified in Section 44932. *"Unprofessional conduct"* as used in this section means, and refers to, the unprofessional conduct particularly specified as a cause for dismissal or suspension in Sections 44932 and 44933 and does not include any other cause for dismissal specified in Section 44932. (Ed.C. #44938) (110, 13, 78, 18, 53, 145)

Grounds for Immediate Suspension

- Upon the filing of *written charges*, duly signed and verified by the person filing them with the governing board of a school district, or upon a *written statement of charges* formulated by the governing board, charging a permanent employee of the district with *immoral conduct*, conviction of a *felony* or of any *crime* involving *moral turpitude*, with incompetency due to *mental disability*, with willful *refusal* to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, with violation of Section 51530, with knowing membership by the employee in the Communist Party or with violation of any provision in Sections 7001 to 7007, inclusive, the governing board MAY, if it deems such action necessary, *immediately suspend the employee* from his duties and *give notice* to him of his suspension, and that *39 days after service of the notice*, he will be dismissed, unless he demands a *hearing*. (Ed.C. #44939) (13)

- If the permanent employee is *suspended* upon charges of knowing membership by the employee in the *Communist Party* or for any violation of Section 7001, 7002, 7003, 7006, 7077, or 51530, he MAY, *within 10 days* after service upon him of notice of such suspension, *file* with the governing board a verified *denial*, in writing, of the charges. In such event, the permanent employee who *demands a hearing within the 30-day period* SHALL *continue* to be *paid* his regular salary *during the period of suspension* and until the entry of the decision of the Commission on Professional Competence, if and during such time as he furnishes to the school district a *suitable bond* or other security acceptable to the governing board, as to guarantee that the employee will *repay* to the school district the amount of salary so paid to him during the period of suspension in case the decision of the Commission on Professional Competence is that he shall be dismissed. If it is determined that the employee may not be dismissed, the school board shall *reimburse* the employee for the *cost of the bond*. (Ed.C. #44939) (13)

Compulsory Leave — Sex Offenses

- Whenever any certificated employee is charged with the commission of any *sex offenses* as defined in Section 44010 by complaint, information or indictment filed in a court of competent jurisdiction, the governing board of the school district SHALL immediately place the employee upon *compulsory leave of absence* for a period of time extending for *not more than 10 days after the date of the entry of the judgement* in the procedings. Such employee's teaching *credential* SHALL be automatically *suspended* for the same period of time. The governing board of the school district MAY extend the *compulsory leave of absence* of the employee beyond such period by giving *notice* to the employee *within 10 days* after the entry of judgment in the proceedings *that the employee will be dismissed* at the expiration of 30 days from the date of service of the notice, *unless* the employee *demands a hearing* as provided in this article. (Ed.C. #44940) (55, 15)

- Any employee placed upon compulsory leave of absence pursuant to this section SHALL continue to be *paid* his or her *regular salary* during the period of his compulsory leave of absence if and during such time as he or she furnishes to the school district a suitable *bond,* or other security acceptable to the governing board, as a guarantee that the employee will *repay* to the school district the amount of *salary so paid to him or her* during that period of compulsory leave of absence *in case the employee is convicted* of such charges, or fails or refuses to return to service following an acquittal of the offense or dismissal of the charges. If the employee is *acquitted* of the offense, or the *charges* against the employee are *dismissed,* the *school district SHALL reimburse* the employee for the *cost of the bond* upon his or her return to service in the school district. (Ed.C. #44940)

Compulsory Leave — Narcotics Offenses

- Whenever any certificated employee of the school district is charged with the commission of any *narcotics offense* by complaint, information, or indictment filed in a court of competent jurisdiction, the governing board of the school district MAY *immediately* place the employee upon *compulsory leave* in accordance with the procedure in this section. (Ed.C. #44940)

- Any action taken pursuant to Ed.C. Section 44940 by a governing board SHALL be reported immediately to the Commission on Teacher Credentialing. The Commission SHALL give priority to the investigation and resolution of such cases. (Ed.C. #44940.5)

- The *notice of suspension* and intention to dismiss SHALL be *in writing* and be *served* upon the employee personally or by United States registered mail addressed to the employee at his last known address. A *copy* of the charges filed, containing the information required by Section 11503 of the Government Code, together with a copy of the provisions of this article, SHALL be attached to the notice. If the employee *does not demand a hearing* within the *30-day period,* he MAY be dismissed upon the expiration of 30 days after service of the notice. (Ed.C. #44941) (13, 34)

Mental Incompetence

- Any certificated employee MAY be *suspended* or *transferred* to other duties by the governing board if the board has reasonable cause to believe that the employee is *suffering from mental illness* of such a degree as to render him *incompetent* to perform his duties.

1. The governing board SHALL forthwith, upon any suspension or transfer hereunder, give to the employee a *written statement* of the facts giving rise to the board's belief, and an *opportunity to appear* before the board *within 10 days* to explain or refute the charges.

2. If, *after* the employee's *appearance* before the board, the board *decides* to *continue* the *suspension* of transfer, or if the *employee chooses not to appear* before the board, the employee SHALL then be offered, in writing, the *opportunity* of being *examined* by a panel of *three psychiatrists* selected by him from a list of psychiatrists to be provided by the board. To assist the panel in making their determination, the *governing board* SHALL *supply* to the panel, prior to the date scheduled for the psychiatric examination, a *list of the duties* of the position from which the employee was suspended or transferred. The *employee* SHALL continue to *receive his regular salary* and all other benefits of employment during the period dating from his suspension to the filing of the report of the panel with the governing board.

3. The *psychiatric examination* SHALL be conducted *at school district expense within 15 days* of any suspension or transfer ordered hereunder. The employee SHALL submit to the examination, but SHALL be entitled to be represented by a psychiatrist or physician of his own choice, and any report of the psychiatrist or physician selected by him shall be filed with the panel at the request of the employee.

4. A *written report* of the panel on the examination of the suspended or transferred employee SHALL be *submitted to the governing board* within 10 days after completion of the examination. *A copy SHALL be supplied to the employee upon request. The report SHALL contain a finding* on whether the employee is suffering from *mental illness* of such a degree as to render him *incompetent* to perform his duties.

5. If a *majority* of the panel *conclude* that the employee *should be permitted to return* to his duties, no *written record* of the suspension or of the determination of the panel SHALL be *retained,* and in all respects any written record concerning the employee SHALL appear as it did before the suspension was made.

Mandatory Sick Leave

6. If a *majority* of the panel *find* in their report that the employee *is suffering from mental illness* of such a degree as to render him incompetent to perform his duties, the governing board MAY, upon reciept of the report, *place the employee on mandatory* sick leave of absence. Any mandatory sick leave of absence imposed under this section SHALL NOT *exceed two years,* during which period the employee SHALL be *entitled* to *sick leave, hospital and medical benefits* which he accrued during his employment by the governing board but only to the extent of such accrual.

7. Any *employee* placed on mandatory sick leave of absence pursuant to this section MAY in writing immediately *demand a hearing.* Thereupon the governing board SHALL *file a complaint* in the *superior court* of the county in which the school district or the major part thereof is located, *setting forth the charges* against the employee and *asking that the court* inquire into the

charges and *determine* whether or not the *charges are true* and, if true, whether they constitute *sufficient grounds* for placing the employee on mandatory sick leave of absence, and for a judgment pursuant to its findings.

8. *If the court finds* that the employee was *not* at the time of the suspension *incompetent* to perform his assigned duties, and should not have been placed on mandatory sick leave of absence, the *employee* SHALL be immediately *reinstated* to the same or a substantially similar position with *full back salary,* and any *written record* of the suspension or transfer or any report of the panel shall be *destroyed.* (64)

Review After Two Years

9. *If the court confirms* the placing of the employee on mandatory sick leave, or if the *employee does not seek a hearing,* then *upon written request of the employee* made *not earlier than six months nor later than two years after* the date he was placed on mandatory sick leave of absence, a *new panel of three psychiatrists* SHALL be convened by, and at the expense of, the governing board to review its original conclusion. If the original conclusion is not changed by the new panel as a result of such review, the employee SHALL be continued on the mandatory sick leave of absence except that when the employee's total period of absence *exceeds two years,* the governing board SHALL either rescind its action and *reinstate* the employee to the same or a substantially similar position, or SHALL serve the employee with a *notice of intention to dismiss him* and proceed according to Section 44943.

10. If a *majority of the new panel* concludes in its report, or any subsequent review thereof, that the suspended employee or employee on mandatory sick leave of absence should be *permitted to return to his duties,* or *if the court so concludes,* the governing board SHALL take immediate action to *restore* the employee to the position from which he was suspended or transferred or to a substantially similar position.

11. Every *hearing* and action by or before the governing board pursuant to this section SHALL be *in executive session* and *no decision, action or occurrence* therein SHALL be *made public,* unless the employee so requests in writing.

12. Nothing in this section shall be construed to supersede Section 44949. (Ed.C. #44942) (64)

Dismissal or Suspension Hearing

- When an *employee who has been served with notice* pursuant to Section 44934 of the governing board's *intention to dismiss or suspend him or her demands a hearing,* the *governing board* SHALL have the *option* either (a) to *rescind* its action, or (b) *schedule a hearing* on the matter. (Ed.C. #44943)

- In a dismissal or suspension proceeding initiated pursuant to Section 44934, if *a hearing is requested* by the employee, the hearing SHALL be *commenced within 60 days* from the date of the employee's demand for a hearing. The hearing SHALL be initiated, *conducted,* and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; provided however, that the *hearing date* SHALL be established after *consultation* with the employee and the *governing board,* or their representatives, and the Commission on Professional Competence SHALL have all the power granted to an agency therein, except that the right of

discovery of the parties SHALL NOT BE *limited* to those matters set forth in Section 11507.6 of the Government Code but SHALL *include* the *rights* and *duties* of *any party in a civil action* brought in a superior court. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, *no discovery* SHALL occur later than *30 calendar days* after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. (Ed.C. #44944) (53)

Discovery

- In all cases, *discovery* SHALL be *completed* prior to *seven calendar days before the date* upon which the *hearing* commences. If any *continuance* is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearings as provided in this subdivision SHALL be *extended* for a period of time equal to such continuance; provided, however, that such extension SHALL NOT include the period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section. If the right of *discovery* granted under the preceding paragraph is *denied* by either the employee or the governing board, all the *remedies* in Section 2034 of the Code of Civil Procedure SHALL be *available* to the party seeking discovery and the court of proper jurisdiction, to entertain his motion, shall be the superior court of the county in which the hearing will be held. (Ed.C. #44944)

- The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure SHALL NOT be applied so as to *deny discovery* in a hearing conducted pursuant to this section. The superior *court* of the county in which the hearing will be held MAY, upon motion of the party seeking discovery, *suspend the hearing* so as to comply with the requirement of the preceding paragraph. (Ed.C. #44944)

Evidence

- *No witness* SHALL be *permitted* to *testify* at the hearing *except upon oath* or affirmation. *No testimony* SHALL be *given* or evidence introduced relating to matters which occurred *more than four years prior* to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee MAY be introduced, but no decisions relating to the dismissal or suspension of any employee SHALL be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice. (Ed.C. #44944)

Hearing Conducted by Commission on Professional Competence

- The *hearing* provided for in this section SHALL be *conducted* by a *Commission on Professional Competence. One member* of the Commission SHALL be *selected* by the *employee, one member* SHALL be *selected* by the *governing board,* and *one member* SHALL be a *hearing officer* of the State Office of Administrative Procedure who SHALL be chairman and a voting member of the commission and SHALL be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason *fails to select* a commission member at least seven calendar days prior to the date of the hearing, such failure SHALL constitute a *waiver of the right to selection,* and the county board of education or its specific designee SHALL immediatley make the selection. When the county board of education is also the governing board of the school district or has by statute

been granted the powers of a governing board, the selection SHALL be made by the Superintendent of Public Instruction, who SHALL be reimbursed by the school district for all costs incident to the selection. (Ed.C. #44944)

- The member selected by the governing board and the member selected by the employee SHALL NOT be *related to the employee* and SHALL NOT be *employees of the district* initiating the dismissal or suspension and SHALL hold a currently *valid credential* and have at least *five years' experience* within the past 10 years in the discipline of the employee. (Ed.C. #44944)

- The *decision* of the Commission on Professional Competence SHALL be made *by a majority vote* and the commission SHALL prepare a *written decision* containing findings of fact, determinations of issues, and a disposition which *shall be, solely,* :

  1. That the employee *should be dismissed.*

  2. That the employee should be suspended for a specific period of time without pay.

  3. That the employee *should not be dismissed or suspended.* (Ed.C. #44944)

- The decision of the Commission on Professional Competence that the employee SHOULD NOT be *dismissed or suspended* SHALL NOT be based on *nonsubstantive procedural errors* committed by the school district or governing board unless the errors are *prejudicial errors.* (Ed.C. #44944)

- The commission SHALL NOT have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to paragraph 2 above shall be available only in a suspension proceeding pursuant to #44932 or #44933. (Ed.C. #44944) (140)

- The decision of the Commission on Professional Competence SHALL be deemed to be the final decision of the governing board. (Ed.C. #44944)

- The board MAY adopt from time to time such rules and procedures not inconsistent with provisions of this section, as may be necessary to effectuate this section. (Ed.C. #44944)

- The governing board and the employee SHALL have the right to be represented by counsel. (Ed.C. #44944)

Costs

- Costs of hearing:

  1. If the member selected by the governing board or the member selected by the employee is *employed by any school district* in California, such member SHALL during any service on a Commission on Professional Competence, *continue to receive salary,* fringe benefits, accumulated sick leave, and other leaves and benefits from the district in which the member is employed, but SHALL *receive no additional compensation* or honorariums for service on the Commission.

2. If service on a Commission on Professional Competence occurs *during summer recess* or vacation periods, the member SHALL *receive compensation* proportionate to that received during the current or immediately preceding contract period from the member's employing district, whichever amount is greater.

3. If the commission on Professional competence determines that the employee should be *dismissed* or *suspended,* the *governing board* and the *employee* SHALL *share equally* the *expenses of the hearing,* including the cost of the hearing officer; and the *state* SHALL pay any *costs* incurred under subdivision 2 above, and the reasonable expenses, as determined by the hearing officer, of the member selected by the governing board and the member selected by the employee, including, but not limited to payments or obligations incurred for *travel, meals* and *lodging,* and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee. The *State Controller* SHALL pay all *claims* submitted pursuant to this paragraph *from the General Fund,* and MAY *prescribe reasonable rules,* regulations, and forms for the submission of such claims. The *employee* and the *governing board* SHALL *pay* their *own attorney fees.*

4. If the commission on Professional Competence determines that the employee *should not* be *dismissed* or *suspended,* the *governing board* SHALL *pay all expenses of the hearing,* including the cost of the hearing officer, and any costs incurred under subdivision 2 above, the reasonable expenses, as determined by the hearing officer, of the member selected by the governing board and the member selected by the employee, including, but not limited to payments or obligations incurred for *travel, meals* and *lodging,* and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee, *and reasonable attorney fees* incurred by the employee. (Ed.C. #44944) (140, 154)

- As used in this section, *"reasonable expenses"* SHALL NOT be *deemed "compensation".* If either the governing *board* or the *employee petitions* a *court* of competent jurisdiction for *review* of the decision of the commission, the *payment of expenses* to members of the commission required by this subdivision SHALL NOT be stayed. (Ed.C. #44944)

- In the event that the *decision* of the commission is finally *reversed* or *vacated* by a court of competent jurisdiction, then either the *state,* having paid the commission members' expenses, SHALL be entitled to *reimbursement from the governing board* for such expenses, or the governing board *having paid* such expenses, SHALL be entitled to *reimbursement* from the state. (Ed.C. #44944)

- Additionally, either the *employee, having paid* a portion of the expenses of the hearing, including the cost of the hearing officer, SHALL be entitled to *reimbursement* from the governing board for such expenses, or the *governing board, having paid* its portion and the employee's portion of the expenses of the hearing, including the cost of the hearing officer, SHALL be entitled to *reimbursement* from the employee for that portion of such expenses. (Ed.C. #44944)

Location of Hearing

- The *hearing* provided for in this section SHALL be conducted in a *place selected* by *agreement* among the members of the commission. In the absence of such agreement the place shall be selected by the hearing officer. (Ed.C. #44944)

Meet and Negotiate

- Notwithstanding Ed.C. #44944, the public school *employer* and the exclusive *representative* SHALL, upon request of either party, *meet and negotiate regarding* causes and procedures for *disciplinary action,* other than dismissal, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Ed.C. #44944 SHALL apply. (Government Code Section 3543.2)

- At a hearing conducted pursuant to Section 44944 the *hearing officer, before admitting* any *testimony* or evidence *concerning* an individual *pupil,* SHALL *determine* whether the introduction of such testimony or evidence at an open hearing would violate any of the *provisions relating to privacy of pupil records.* If the hearing officer, in his discretion, determines that any of such provisions would be violated, he SHALL *order* that the *hearing,* or any portion thereof at which such testimony or evidence would be produced, be *conducted in executive session.* (Ed.C. #44944.1)

Court Review

- The decision of the Commission on Professional Competence MAY, on petition of either the governing board or the employee, *be reviewed by a court* of competent jurisdiction. *The court,* on review, SHALL *exercise* its *independent judgement* on the evidence. The proceeding SHALL be set for hearing at the *earliest possible date,* SHALL take precedence over all other cases, except older matters of the same character and matters to which special precedence is given by law. (Ed.C. #44945) (140, 153)

B. Reinstatement

- If the employee has been suspended pending the hearing, he SHALL be *reinstated* within *five days* after the governing board's *decision in his favor,* and SHALL be *paid full salary* by the governing board for the period of his suspension. (Ed.C. #44946) (13, 78, 18, 81, 117)

C. Probationary Employees

Before 1983–1984

- Governing boards of school districts SHALL dismiss probationary employees during the school year for cause only, as in the case of permanent employees. This section SHALL apply only to probationary employees whose probationary period commenced prior to the 1983–84 fiscal year, or who are employed in a school district having an average daily attendance of less than 250 pupils. (Ed.C. #44948) (93, 79, 91, 114)

Suspension Without Pay

- The governing board MAY *suspend* a probationary employee for a specified period of time *without pay* as an *alternative to dismissal* pursuant to this section. This subdivision SHALL apply only to probationary employees whose probationary period commenced prior to the 1983–84 fiscal year. (Ed.C. #44948)

Dismissal

- First and second year probationary employees MAY be *dismissed* during the

school year for *unsatisfactory performance* (See Section 44660) or for *cause* (See Section 44932). Any dismissal pursuant to this section SHALL be in accordance with all of the following procedures.

30 Days Notice for Dismissal

(1) The *superintendent* of the school district SHALL give *30 days'* prior written *notice* of dismissal, not later than *March 15* in case of *second year* probationary employees. The notice SHALL include a statement of the *reasons* for the dismissal and notice of the opportunity to *appeal.* In the event of a dismissal for unsatisfactory performance, a copy of the *evaluation* conducted pursuant to Section 44664 SHALL accompany the written notice.

(2) The employee SHALL have *15 days* from receipt of the notice of dismissal to submit to the governing board a written *request for a hearing.* The governing board MAY *establish procedures* for the appointment of a hearing officer to conduct the hearing and submit a recommended decision to the board. The *failure* of an employee to *request* a hearing within 15 days from receipt of a dismissal notice SHALL constitute a *waiver* of the right to a hearing. (Ed.C. #44948.3)

From 1983–1984 Fiscal Year

Suspension Without Pay

- The governing board, pursuant to this section, MAY *suspend* a probationary employee for a specified period of time *without pay* as an *alternative to dismissal.* This section (44948.3) SHALL apply only to probationary employees whose probationary period commenced during the 1983–84 fiscal year or any fiscal year thereafter, and SHALL NOT apply to probationary employees in a school district having an average daily attendance of less than 250 pupils. (Ed.C. #44948.3)

Employed Before 1983–1984

- The following section (44948.5) SHALL apply only to (1) probationary employees of a school district with an average daily attendance of *less than 250 pupils,* or (2) those persons currently employed as probationary employees whose probationary period commenced *prior to the 1983–84 fiscal year.* (Ed.C. #44948.5)

Dismissal for Other Than Declining Enrollment

March 15 Notice

- No later than *March 15* and before a probationary employee is given notice by the governing board that his or her services will not be required for the ensuing year for *reasons other than* those specified in Section 44955, *(declining enrollment),* the governing board and the employee SHALL be given written *notice* by the *superintendent* of the district, that it has been *recommended that such notice be given* to the employee, and *stating the reasons* therefor. (Ed.C. #44948.5)

- If the probationary employee has been in the employ of the district for *less than 45 days on March 15,* the giving of such *notice* MAY be *deferred* until the *45th day of employment* and all time period and deadline dates herein prescribed shall be coextensively extended. (Ed.C. #44948.5)

Confidentiality

- Until the employee has *requested a hearing* or has *waived* his or her right to a hearing, the *notice* and the *reasons* therefor SHALL be *confidential* and SHALL NOT be *divulged* by any person, except as may be necessary in the performance of duties; however, the violation of this requirement of confidentiality, in and

of itself, SHALL NOT in any manner be construed as *affecting the validity* of any hearing conducted pursuant to this section. (Ed.C. #44948.5)

Hearing

- The employee MAY *request a hearing* to determine if there is *cause* for not reemploying him or her for the ensuing year. A request for a hearing SHALL be *in writing* and SHALL be *delivered* to the person who sent the notice, on or before a date specified therein, which SHALL NOT be less than *seven days after* the date on which the *notice is served* upon the employee. If an employee fails to request a hearing on or before the date specified, his or her *failure* to do so SHALL constitute a *waiver* of his or her right to a hearing. The notice to the employee SHALL advise the employee of the provisions of this subdivision. (Ed.C. #44948.5)

- In the event a *hearing is requested* by the employee, the proceeding SHALL be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board SHALL have all the power granted to an agency therein, except that: (1) the respondent SHALL file his or her *notice of defense,* if any, *within five days* after service upon him or her of the accusation and he or she SHALL be *notified* of such five-day period for filing in the accusation; (2) the *discovery* authorized by Section 11507.6 of the Government Code SHALL be *available* only if *request* is made therefor *within 15 days* after service of the accusation, and the *notice* required by Section 11505 of the Government Code SHALL *so indicate;* and (3) the *hearing* SHALL be *conducted by a hearing officer* who SHALL prepare a proposed *decision,* containing *findings of fact* and a *determination* as to whether the charges sustained by the evidence are related to the *welfare of the schools* and the pupils thereof. (Ed.C. #44948.5)

- The *proposed decision* SHALL be prepared for the governing board and SHALL contain a determination as to the *sufficiency of the cause* and a *recommendation* as to disposition. However, the *governing board* SHALL make the *final determination* as to the sufficiency of the cause and disposition. *None of the findings,* recommendations, or determinations contained in the proposed decision prepared by the hearing officer SHALL be *binding on the governing board.* Nonsubstantive procedural errors committed by the school district or governing board of the school district SHALL NOT constitute cause for dismissing the charges unless the errors are prejudicial errors. *Copies of the proposed decision* SHALL be *submitted* to the *governing board* and to the *employee* on or before May 7 of the year in which to proceeding is commenced. All expenses of the hearing, including the cost of the hearing officer, SHALL be paid by the governing board from the district funds. The board MAY adopt from time to time such rules and procedures not inconsistent with provisions of this section, as may be necessary to effectuate this section. (Ed.C. #44948.5)

- The governing board's *determination not to reemploy* a probationary employee for the ensuing school year SHALL be for *cause* only. The determination of the governing board as to the sufficiency of the cause pursuant to this section SHALL be conclusive, but the cause *SHALL relate solely to the welfare of the schools* and the *pupils* thereof. The decision made after the hearing SHALL be effective on May 15 of the year the proceeding is commenced. (Ed.C. #44948.5)

- *Notice* to the probationary employee by the governing board that his or her service will not be required for the ensuing year, SHALL be *given no later than May 15.* (Ed.C. #44948.5)

- If a governing board notifies a probationary employee that his or her services will not be required for the ensuing year, the board SHALL within 10 days after delivery to it of the *employee's written request,* provide the employee with a *statement of its reasons* for not reemploying him or her for the ensuing school year. Any notice or request SHALL be *deemed sufficient* when it is *delivered in person* to the employee to whom it is directed, or when it is deposited in the United States *registered mail,* postage prepaid and addressed to the last known address of the employee. (Ed.C. #44948.5)

May 15 Notice

- In the event that the governing board does not give notice *on or before May 15,* the employee SHALL be *deemed reemployed* for the ensuing school year. If after request for hearing any continuance is granted pursuant to Government Code Section 11524, the dates prescribed SHALL be extended for a period of time equal to the continuance. (Ed.C. #44948.5)

Dismissal Due to Declining Enrollment

March 15 Notice

- *No later than March 15* and *before an employee is given notice by the governing board* that his *services will not be required* for the ensuing year, for the reasons specified in Section 44955 (declining enrollment) the *governing board* and the *employee* SHALL be *given written notice* by the *superintendent* of the district or his designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that such notice be given to the employee, and stated the *reasons* therefor. (Ed.C. #44949) (5, 8, 47, 71, 83, 115, 141, 151, 155, 156)

- *Until* the employee has *requested* a *hearing* or has *waived* his right to a hearing, the *notice* and the reasons therefore SHALL be *confidential* and SHALL NOT be *divulged* by any person, except as may be necessary in the performance of duties; however, the *violation* of this *requirement of confidentiality,* in and of itself, SHALL NOT in any manner be construed as *affecting* the *validity* of any hearing conducted pursuant to this section. (Ed.C. #44949)

Hearing

- The employee MAY *request* a *hearing* to determine if there is *cause* for not reemploying him for the ensuing year. A request for a hearing must be *in writing* and must be delivered to the person who sent the notice on or before a date specified therein, which SHALL NOT be less than seven days after the date on which the notice is served upon the employee. If an employee *fails to request a hearing* on or before the date specified, his or her failure to do so SHALL *constitute* his or her *waiver* of his or her right to a hearing. The notice provided for SHALL advise the employee of these provisions. (Ed.C. #44949)

- In the event a *hearing* is *requested* by the employee the proceeding SHALL be *conducted* and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that: (1) the respondent (employee) SHALL *file* his or her *notice* of *defense,* if any, *within five days* after service upon him or her of the accusation and he or she SHALL be notified of such five-day period for filing in the accusation; (2) the *discovery* authorized by Section 11507.6 of the Government

Code SHALL be *available only if request* is made therefor within 15 days after service of the accusation, and the *notice* required by Section 11505 of the Government Code SHALL so indicate; and (3) the hearing SHALL be *conducted by a hearing officer* who SHALL prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. (Ed.C. #44949)

- The proposed decision SHALL be prepared for the governing board and SHALL contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the *governing board* SHALL *make the final determination* as to the *sufficiency of the cause and disposition.*

  None of the findings, recommendations, or determinations contained in the proposed decision prepared by the hearing officer SHALL be binding on the governing board. (Ed.C. #44949)

- Nonsubstantive procedural errors committed by the school district or governing board SHALL NOT constitute cause for dismissing the charges unless the errors are prejudicial errors. (Ed.C. #44949)

Costs

- *Copies* of the proposed decision SHALL be *submitted* to the *governing board* and to the *employee on or before May 7* of the year in which the proceeding is commenced. *All expenses* of the hearing, including the cost of the hearing officer, SHALL be *paid* by the *governing board* from the district funds. The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section, as may be necessary to effectuate this section. (Ed.C. #44949)

- *Any notice or request* SHALL be *deemed sufficient* when it is *delivered* in person *to the employee* to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee. (Ed.C. #44949)

- If after request for hearing, any continuance is granted pursuant to Government Code Section 11524, the dates prescribed above which occur on or after the date of granting the continuance SHALL be *extended* for a period of time equal to such continuance. (Ed.C. #44949)

D. Temporary Employees

- *Governing boards* of school districts MAY *dismiss temporary employees* requiring certification qualifications *at the pleasure* of the board. A temporary employee who *is not dismissed* during the *first three school months*, or in the case of migratory schools, during the first four school months of the school term for which he was employed and who has not been classified as a permanent employee SHALL be *deemed* to have been *classified* as a *probationary employee* from the time his services as temporary employee commenced. (Ed.C. #44954) (8)

E. Substitute Employees

- *Governing boards* of school districts MAY *dismiss substitute employees* at any time *at the pleasure* of the board. (Ed.C. #44953)

F. Lay-offs

- *No permanent* employee SHALL be deprived of his or her position for *causes other than those specified in Sections 44907, and 44923,* and *Sections 44932 to 44947, inclusive,* and *no probationary employee SHALL be deprived* of his position for *cause other* than as *specified* in *Sections 44948 to 44949, inclusive.* (Ed.C. #44955)

Declining Enrollment

Discontinuance of Service

Modification of Curriculum

- Whenever in any school year the *average daily attendance* in all of the schools of a district for the *first six months* in which school is in session shall have *declined below* the *corresponding period of either of the previous two school years,* whenever the governing board determines that attendance in a district *will decline* in the following year as a result of the *termination* of an interdistrict *tuition agreement* as defined in Section 46304, or whenever a *particular kind of service* is to be *reduced* or *discontinued* not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become *necessary* by reason of any of such conditions to *decrease the number of permanent employees* in the district, the *governing board* MAY *terminate the service* of not more than a *corresponding percentage* of the certificated employees of said district, *permanent as well as probationary,* at *the close of the school year.* Except as otherwise provided by *statute,* the *services of no permanent employee may be terminated* under the provisions of this section *while any probationary employee, or any other employee with less seniority is retained* to render a service which said permanent employee is *certificated and competent to render.* (Ed.C. #44955) (22, 118, 135, 136)

- In *computing* a *decline* in average daily attendance for purposes of this section for a *newly formed* or *reorganized* school district, each school of the district SHALL be deemed to have been a school of the newly formed or reorganized district for both of the two previous school years. (Ed.C. #44955)

Budget Act

- During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has increased by at least 2 percent, and if in the opinion of the governing board it is necessary to *decrease the number of permanent employees* in the district, the governing board MAY *terminate* the services of certificated employees of the district, *permanent* as well as *probationary,* pursuant to the provisions of Section 44955 but, notwithstanding anything to the contrary in Section 44955, in accordance with a schedule of notice and hearing adopted by the governing board. (Ed.C. #44955.5)

Order of Lay-Offs

- As between *employees* who *first rendered paid service* to the district on the *same date,* the governing board SHALL *determine* the *order* of termination *solely* on the *basis* of *needs of the district* and the students thereof. *Upon the request* of any employee whose order of termination is so determined, the *governing board* SHALL *furnish in writing* no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a *statement* of the *specific criteria* used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination SHALL NOT be interpreted to give affected employees any legal right or interest that would not exist without such a requirement. (Ed.C. #44955)

May 15 Notice

- *Notice* of such *termination of services,* SHALL be *given before the 15th of May* in the manner prescribed in Section 44949, and *services* of such employees SHALL be *terminated* in the *inverse of the order in which they were employed,* as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a *permanent* or *probationary employee* is *not given the notices* and a right to a hearing as provided for in Section 44949, he or she SHALL be *deemed reemployed* for the ensuing school year. (Ed.C. #44955) The governing board SHALL *make assignments and reassignments* in such a manner that employees SHALL be retained to render any service which their seniority and qualifications entitle them to render. (Ed.C. #44955)

Subject Matter Competency

- However, prior to assigning or reassigning any certificated employee to *teach a subject* which he or she has *not previously taught,* and for which he or she *does not have a teaching credential* or which is *not within* the employee's major area of postsecondary study or the equivalent thereof, the governing board SHALL require the employee to *pass a subject matter competency test* in the appropriate subject. (Ed.C. #44955)

- A school district MAY *deviate* from terminating a certificated employee in order of seniority for either of the following reasons:

District's Specific Need

(1) The district demonstrates a *specific need* for personnel to teach a *specific course* or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee *has special training* and experience necessary to teach that course or course of study or to provide those services, *which others with more seniority do not possess.*

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws. (Ed.C. #44955) (151, 155, 156)

G. Rights of Terminated Employees

- Any *permanent employee whose services have been terminated* as provided in Section 44955 SHALL have the following *rights:*

Permanent Employees

1. For the period of *39 months* from the date of such termination, any employee who in the meantime has not attained the age of 65 years SHALL have the *preferred right to reappointment,* in the order of original employment as determined by the board in accordance with the provisions of Sections 44831 to 44855, inclusive, *if the number of employees is increased* or the *discontinued service is reestablished* with no requirements that were not imposed upon other employees who continued in service; provided that *no probationary or other employee with less seniority* SHALL be *employed* to render a service which said employee is certificated and competent to render. However, prior to reappointing any certificated employee to *teach a subject* which he or she has *not previously taught,* and for which he or she *does not have a teaching credential* or which is *not within* the employee's major area of postsecondary study or the equivalent thereof, the governing board SHALL require the employee to *pass a subject matter competency test* in the appropriate subject. (160)

39-Month Preference

2. The aforesaid *right to reappointment* MAY be *waived* by the employee, without prejudice, *for not more than one school year,* unless the board extends this right, but such waiver SHALL NOT *deprive* the employee of his *right* to *subsequent offers* of reappointment.

3. A school district MAY *deviate* from *reappointing* a certificated employee in order of seniority for either of the following reasons:

Specific Needs of District

A. The district demonstrates a *specific need* for *personnel* to teach a *specific course* or course of study or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and the *the employee has special training* and experience necessary to teach that course or course of study, or to provide those services, which *others with more seniority do not possess.*

B. For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

No Break in Service

4. As to any such *employee who is reappointed,* the *period of his absence* shall be *treated* as a *leave of absence* and SHALL NOT be *considered* as a *break in the continuity* of his service; he SHALL *retain* the *classification* and *order of employment* he had when his services were terminated, and credit for prior service under any state or district retirement system SHALL NOT be effected by such termination, but the *period of his absence* SHALL NOT *count* as a part of the *service* required for *retirement.*

Opportunity for Substitute Service

5. *During* the *period* of his preferred right to reappointment, any such *employee* SHALL, in the order of original employment, *be offered prior opportunity for substitute service* during the absence of any other employee who

has been granted a leave of absence or who is temporarily absent from duty; provided that his services MAY be terminated upon the return to duty of said other employee, and that said substitute service SHALL NOT *affect* the *retention* of his *previous classification and rights.* If any school year the employee serves as a substitute in any position requiring certification for any 21 days or more within a period of 60 school days, the *compensation* the employee receives for substitute service in that 60-day period, including his or her first 20 days of substitute service, SHALL be *not less* than the amount the employee would receive if he or she were being *reappointed.*

Assignment to other District

6. *During* the *period* of the employee's preferred right to reappointment, the *governing board* of the district, if it is *also the governing board of one or more other districts,* MAY *assign him to service,* which he is certificated and competent to render, *in said other district* or districts; provided that the *compensation* he receives therefor MAY in the discretion of the governing board be the *same* as he *would have received* had he been serving in the district from which his services were terminated, that his *service* in said *other district* or districts SHALL be *counted* toward the *period required* for both state and local *retirement,* as defined by Section 22102, as though rendered in the district from which his services were terminated, and that *no permanent employee* in said *other district* or districts SHALL be *displaced* by him.

7. At any time *prior* to the *completion* of *one year after his return* to service, he MAY *continue or make up,* with interest, his *own contributions* to any state or district *retirement system,* for the period of his absence, but it SHALL NOT be *obligatory on state or district to match* such contributions.

8. Should he become *disabled* or *reach retirement age* at any time *before his return to service,* he SHALL *receive,* in any state or district *retirement system* of which he was a member, *all benefits* to which he would have been entitled had such event occurred at the time of his termination of service, plus any benefits he may have qualified for thereafter, as though still employed. (Ed.C. #44956) (42, 73, 48, 139)

- The *services* of any *permanent certificated employee* referred to in Section 44959 who has been *appointed to substitute service* in place of another employee who is on *leave of absence* for civilian or military *war service* MAY be *terminated upon the return* of said other employee from such leave of absence, but *only* at the *end of the current semester* or quarter and *not less than 30 days after written notice* that his services will no longer be required. (Ed.C. #44960)

- Any *probationary employee* whose services have been *terminated* as provided in *Section 44955* shall have the following *rights:*

Probationary Employees

1. For the period of *24 months* from the date of such termination, any *employee* who in the meantime has not attained the age of 65 years SHALL have the *preferred right to reappointment, subject to the prior rights* to reappointment by all *permanent employees* as set forth in Section 44956, in the order of original employment as determined by the governing board in

24-Month Preference

accordance with the provisions of Sections 44831 to 44855, inclusive, if the *number of employees is increased* or the *discontinued service is reestablished,* with no requirements that were not imposed upon other employees who continued in service. Except as otherwise provided, no probationary or temporary employee with less seniority SHALL be employed to render a service which such employee is certificated and competent to render and provided that such an employee shall be given a priority over employees whose right to a position is derived pursuant to Section 44918. However, prior to reappointing any certificated employee to *teach a subject* which he or she has *not previously taught,* and for which he or she *does not have a teaching credential* or which is *not within* the employee's major area of postsecondary study or the equivalent thereof, the governing board SHALL require the employee to *pass a subject matter competency test* in the appropriate subject. A school district MAY, deviate from reappointing a probationary employee in order of seniority for either of the following reasons:

Specific Needs of District

A. The district demonstrates a *specific need* for *personnel* to teach a *specific course* or course of study or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that *the employee has special training* and experience necessary to teach that course or course of study, or to provide those services, which *others with more seniority do not possess.*

B. For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws. (Ed.C. #44957)

No Break in Service

2. As to any such *employee* who is *reappointed,* the *period of his absence* SHALL be *treated* as a *leave of absence* and SHALL NOT be *considered* as a *break in the continuity* of his service, he SHALL *retain* the *classification* and *order of employment* he had when his services were terminated, and *credit for prior service* under any state or district retirement system SHALL NOT be *affected* by such termination; provided, however, that the *period of his absence* SHALL NOT be *counted* as a part of the *service required* for attaining *permanent* status in the district or, except as provided in subdivision (4), for *retirement* purposes.

Opportunity for Substitute Service

3. *During* the *period* of his preferred right to reappointment, any such *employee* SHALL, in the order of original employment, and subject to the rights of permanent employees as set forth in Section 44956, be *offered prior opportunity for substitute service* during the absence of any other employee who has been granted leave of absence or who is temporarily absent from duty; provided that his services may be terminated upon a return to duty of such other employee, that such substitute service shall not affect the retention of his previous classification and rights, and that *such an employee* SHALL be *given a priority* over employees whose right to a substitute position is derived pursuant to Section 44918.

4. At any time *prior* to the *completion* of *one year after his return* to service, an employee reappointed under the provisions of this section MAY *elect* to

continue or to *reinstate* his *membership* and interest in any state or district *retirement system* and to *receive retirement benefits* as if no absence from service had occurred. In the event of such election, the employee SHALL *pay into the retirement system* the amount of *his share* of contribution *and* the *district's share of contribution attributable* to the period of absence and the amount of any *contributions withdrawn, plus interest.* (Ed.C. #44957)

- If the services of any *probationary employee* are terminated, or if such employee is *dismissed,* because of a reduction *in the attendance* of pupils or the *discontinuance of a particular kind of service,* and such employee is *reemployed within* a period of *39 months* from the last day of the school year within which his service was so terminated, or within 39 months after the cessation of hostilities, if such reduction in attendance or discontinuance of service was due to war conditions, the *period of his* absence SHALL NOT *count* as a part of the *service required* as a condition precedent to the *classification* of such employee as a *permanent employee* of the district, but *such absence* SHALL NOT be *construed* as a *break* in the *continuity* of the service of such employee. (Ed.C. #44958)

- The provisions of this section shall apply to any probationary employee who shall be or who shall have been dismissed or terminated after January 1, 1949, because of reduction in attendance or discontinuance of a particular kind of service. (Ed.C. #44958)

Permanent Employees During Wars

- As to any *permanent* certificated employee whose *services* have been *terminated because of the effect of wars* in which the United States is engaged *upon the attendance of pupils* or upon the maintenance of a particular kind of service, the *effective period covered by all rights* enumerated in Section 44956 is *extended until two years after the cessation of hostilities,* and in addition thereto for a like period the said employees SHALL have the following *rights:*

  1. He MAY voluntarily *accept termination of service in other than the order of original employment* and retain all of the other rights herein provided.

  2. If he is engaged in any form of civilian or military war service, any *credential* or certificate he holds is *continued in full force* and effect *until 90 days after the termination* of his employment therein.

  3. If, either before or after such termination, he *engages in* any form of *war service* for which provision is made in Section 44800 or elsewhere in the laws of this state, he SHALL *retain all rights granted by war service legislation as though still employed;* provided that the *right to reappointment* SHALL be in the *order of original employment,* as determined in accordance with the provisions of Sections 44844 and 44845. (Ed.C. #44959)

- The services of all permanent certificated employees dismissed since December 7, 1981, because of the effect of the wars upon attendance of pupils or the maintenance of service SHALL be deemed to have been terminated in accordance with the provisions of Section 44955, as amended, and said employees SHALL have all of the rights in this section provided. (Ed.C. #44959)

- For a certificated employee *initially employed in an administrative position* on or after *July 1, 1983,* who *transfers to a teaching position,* the period of employment in the administrative position SHALL NOT be *included in determining seniority* for purposes of Sections 44955 and 44956, except for school site administrators who shall earn up to a maximum of three years seniority while serving as site administrators. (Ed.C. #44956.5)

H. Probationary Lay-Offs — Exceptions

- The *layoff provisions* of Sections 44955, 44956, 44957, 44958, and 44959 SHALL NOT be *applicable* to *probationary* certificated employees who are *covered by a collective agreement* which contains provisions for the layoff and reassignment of such employees. If layoff *proceedings* are *commenced* under procedures prescribed by any of these sections, such proceedings shall *continue in accordance with the statutory procedures, notwithstanding the subsequent adoption* of a *collective agreement* or the inclusion in the coverage thereof of employees not so covered at the time such proceedings commenced. (Ed.C. #44959.5)

- If layoff *proceedings* are *commenced* under a *collective agreement* which contains provisions for the layoff of probationary certificated employees, such proceedings SHALL *continue* in accordance with the agreement, *notwithstanding the subsequent termination of the agreement.* (Ed.C. #44959.5)

- This section SHALL *only apply* to a school district in which the *average daily attendance is 400,000 or more,* and SHALL NOT be *interpreted* to *apply to the termination of any probationary certificated employee* pursuant to Section 44948 or Section 44949. (Ed.C. #44959.5)

I. Date of Resignation

- Governing boards of school districts SHALL *accept* the *resignation* of any employee and SHALL *fix the time* when the *resignation takes effect,* which SHALL NOT be *later* than the *close of the school year* during which the resignation has been received by the board. (Ed.C. #44930) (105, 44, 133)

J. Reemployment/Military Service

- Whenever any certificated employee of any school district, who *at the time of his resignation* was classified as *permanent,* is *reemployed within 39 months* after his last day of paid service, the *governing board* of the district SHALL, *disregarding the break in service, classify* him as, and restore to him all the rights, benefits and burdens of, a *permanent* employee, except as otherwise provided in this code, provided that *time spent in active military service,* as defined in Section 44800, subsequent to the last day of paid service SHALL NOT *count as part of the aforesaid 39-month period;* and provided further, that any such employee who has engaged in active military service subsequent to his last paid service and who resigned more than 39 months prior to October 1, 1949, SHALL be deemed to have complied with all requirements of this section if he is or has been reemployed before July 1, 1950. (Ed.C. #44931)

K. Compensation for Wrongful Discharge

- Notwithstanding any other provision of law, if prior to September 18, 1959, any certificated *employee* of any school district is *discharged* from a position requiring certification qualifications *contrary to the provisions of this code* and is *thereafter restored* to his position pursuant to judical proceedings in a court of competent jurisdiction, the *governing board* of the school district MAY *pay* such employee an *amount equal to the amount which would have been paid* to such employee from the date of such discharge to the date of his restoration to his position, irrespective of whether such employee was the holder of a valid certification document during the period of such unlawful removal from his position. (Ed.C. #45037)

- Court's decision has made this mandatory. (81)

L. Increased Cost of Dismissal Procedure

- The *amount* determined pursuant to subdivision (g) of Section 42233 (maximum tax rates) SHALL be *adjusted* to allow for any *increased costs* to a school district which may be incurred by it in carrying out the requirements imposed by the amendments made to Section 44949 in this section. (Ed.C. #45020)

IX. Personnel Files

A. Contents and Inspection

- *Materials in personnel files* of employees which may serve as a basis for affecting the status of their employment are to be *made available* for the *inspection of the person involved.* (Ed.C. #44031)

- Such material is *not to include ratings, reports, or records* which (1) were *obtained prior to* the *employment* of the person involved, (2) were *prepared by identifiable* examination committee members, or (3) were obtained in *connection* with a *promotional examination.* (Ed.C. #44031)

- Every *employee* SHALL have the *right to inspect* such materials upon request, provided that the request is made at a time when such person is not actually required to render services to the employing district. (Ed.C. #44031)

- *Information of a derogatory nature,* except material mentioned in the second paragraph of this section, SHALL NOT be *entered* or *filed* unless and until the *employee* is *given notice* and an *opportunity to review* and *comment* thereon. An employee SHALL have the *right to enter,* and have attached to any such derogatory statement, his *own comments* thereon. Such review SHALL take place during *normal business hours,* and the employee SHALL be *released* from *duty* for this purpose without salary reduction. (Ed.C. #44031) (29, 85)

X. Administrators

A. Superintendents and Assistant Superintendents

- *No governing board* or county superintendent of schools SHALL *affix* the *title* of deputy, associate or assistant *superintendent* to any *position not defined* by this code as a position *requiring certification qualifications* or which does not qualify under the provisions of Section 44065 as a position requiring certification qualifications; except that any such title MAY be assigned to the position of business manager or a related business position but such position SHALL NOT, if so designated, be deemed to be a position requiring certification qualifications, nor SHALL the employee be deemed to be a certificated employee. (Ed.C. #35030)

- Any district *superintendent* of schools, or deputy, associate, or assistant superintendent of school, MAY be *elected* for a term of *four years*. The *governing board* of any school district, with the *consent* of the *employee* concerned, MAY *at any time terminate,* effective on the next succeeding *first day of July,* the term of *employment* of, and any contract of employment with, the *superintendent* of schools, or any associate, deputy, or assistant superintendent of schools of the district, and reelect or *reemploy* the *employee,* on such *terms and conditions* as may be *mutually agreed upon* by the board and employee, for a new term to commence on the effective date of the termination of the existing term of employment. (Ed.C. #35031) (80, 113)

Notice 45 Days in Advance of Expiration of Term

- The the event the *governing board* of a school district *determines* the *superintendent* of schools of the district or deputy, associate, or assistant superintendent of schools, or employee in the senior mangagement of the classified service is *not to be reelected* or reemployed as such upon the expiration of his or her term, he or she SHALL be *given written notice* thereof by the governing board *at least 45 days in advance* of the expiration of his or her term. In the event the governing board of a district fails to reelect or reemploy the superintendent of schools of the district, or deputy, associate, or assistant superintendent of schools, or employee in the senior management of the classified service as such and the *written notice* herein provided for *has not been given,* he or she SHALL be *deemed reelected* for a term of the same length as the one completed, and under the same terms and conditions and with the same compensation. The notice requirement of Ed.C. #44951 SHALL NOT apply to persons to whom this section applies. (Ed.C. #35031)

- The *governing board* of each school district MAY *employ* a *principal* for each school under its control. (Ed.C. #35042)

B. Criteria for Employment

- Notwithstanding any provision of law to the contrary, on or after April 30, 1977, the governing board of a *school district* MAY *employ* an individual in an *administrative* or *supervisory position, whether or not such individual holds any supervisory or administrative credential;* provided the individual so employed *meets all* of the following *criteria:*

1. He *holds a valid teaching credential.*

2. He has completed *fifteen years service as a teacher,* as defined in Section 41011, including *ten years* of teaching service in the employ of the *district* which appoints him to an administrative or supervisory position.

3. The *last ten years* of service immediately preceding his appointment to an administrative or supervisory position were as a *teacher of the natural sciences,* the *social sciences* (other than education or educational methodology), the *humanities, mathematics, and the fine arts.* (Ed.C. #44834)

Principals

- *No person* SHALL be *employed* as *principal* of a school of six or more teachers, including the principal, unless he is the *holder* of a valid *teacher's credential and* either a valid school *administration credential* of the same grade as the school to be administered or a valid standard *supervision credential* authorizing service as a principal of a school of the same grade as the school to be administered. (Ed.C. #44860) (80, 113)

- A *substitute principal* holding a valid *teacher's credential* of the same grade as the school to be administered MAY be *employed* without meeting the requirements of Section 44860 to meet an *emergency* for *not more than five months* of any school year. (Ed.C. #44860)

- No one SHALL be *employed* to *supervise* the work of *teachers* for more than half time during any school week *unless* he is the *holder* of a valid *teacher's certificate* authorizing him to teach in the schools and classes in which he is to supervise instruction *and* a valid *supervision certificate.* (Ed.C. #44870)

C. Administrator Certification by the District

- On or before December 1, 1984, the *governing board* of each school district SHALL, as a condition for the receipt of school apportionments from the State School fund, *adopt rules* and regulations establishing school district policies as they relate to the following, and SHALL annually review the policies adopted:

  a. Certification that *personnel assigned to evaluate* teachers have demonstrated *competence* in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's *adopted policies SHALL be made by the governing board.* (Ed.C. #35160.5)

  b. The establishment of district policies ensuring that each *probationary* certificated employee is *assigned to a school* within the district with assurances that his or her status as a new teacher and his or her *potential needs for training,* assistance, and evaluations will be recognized by the district. (Ed.C. #35160.5)

  c. The establishment of policies and procedures which *parents* or guardians of pupils enrolled in the district may use to *present complaints* regarding employees of the district. These policies and procedures SHALL provide for appropriate mechanisms to respond to and where possible to resolve, the complaints. (Ed.C. #35160.5)

D. Two Step Administrative Credential Requirements

Preliminary Services Credential

- The minimum *requirements* for the *preliminary services credential* with a specialization in administrative services are *all of the following:*

  1. The possession of a *valid teaching credential* issued under the law and rules and regulations in effect on or before December 31, 1971, requiring the possession of a baccalaureate degree, or as specified in Section 44259, or as specified in Section 44260 provided the applicant also possesses a baccalaureate degree, or a services credential with a specialization in pupil personnel, health, or librarian services as specified in Sections 44266, 44267, 44268, and 44269.

  2. A minimum of *three years of successful, full-time classroom teaching experience* in the public school, or in private schools of equivalent status or *three years of experience* in the fields of pupil personnel, health, or librarian services.

  3. An entry level *program of specialized and professional preparation in administrative services* approved by the commission or a one year internship in a program of supervised training in administrative services, approved by the commission as satisfying the requirements for the preliminary services credential with a specialization in administrative services. (Ed.C. #44270)

- The preliminary administrative services credential SHALL be *valid* for a period of *five years* from date of *issuance* or *three years* from date of *initial employment* in a position requiring the credential, *whichever date is later,* and SHALL *not* be *renewable.* (Ed.C. #44270)

- A candidate formally enrolled prior to July 1, 1982, in a commission-approved program for the services credential with a specialization in administrative services SHALL have until *June 30, 1984,* to *complete those requirements* for the credential which are in effect on and before June 30, 1982. Candidates initially enrolled in a commission-approved program on or after July 1, 1982, SHALL satisfy all the requirements for the credential set forth in this section. (Ed.C. #44270)

Professional Services Credential

- The minimum *requirements* for the *professional services credential* with a specialization in administrative services are all of the following:

  1. Possession of a valid *preliminary administrative services credential,* as specified in Section 44270.

  2. A minimum of *two years* of successful full-time *experience* in a position requiring the preliminary administrative services credential, as attested by the employing school district or agency.

  3. Completion of a commission-approved *program of advanced study* and appropriate *field experiences* or *internship,* at least one half of which shall

have been engaged in while being employed in a position requiring the preliminary administrative services credential. (Ed.C. #44270.1)

- The professional administrative services credential SHALL be *valid* for a period of *five years* from date of issuance and *MAY be renewed.* (Ed.C. #44270.1)

- The *services credential* with a specialization in administrative services SHALL *authorize the holder to perform,* at all grade levels, *services commensurate with preparation* as determined by the commission and SHALL permit assignment by the governing board of the employing school district any person who administers a pupil personnel program shall hold a service credential with a pupil personnel or administrative services specialization. (Ed.C. #44270.2)

E. Acquisition and Retention of Permanent Status (as a Teacher)

- Notwithstnding Section 44850, and notwithstanding provisions of the charter of any city or city and county to the contrary, on and after July 1, 1978, the *certificated employees* of any school district governed by such a charter who serve as the *head of a department* of the district or in an *administrative or supervisory position* SHALL *neither acquire nor retain permanent status in such position* unless the employee is or becomes eligible for permanent status in accordance with provisions of this code. (Ed.C. #44850.1) (36, 118, 150)

- A *permanent* employee when *advanced from a teaching position* to an *administrative or supervisory* position, or assigned any special or other type of work, or given special classification or designation requiring certification qualifications SHALL *retain his permanent classification* as a classroom *teacher.* (Ed.C. #44893) (9, 17)

- A person employed in an *administrative or supervisory position* requiring certification qualifications, upon *completing a probationary period,* including any time served as a classroom teacher in the same district, SHALL, in a district having an average daily attendance of 250 or more pupils, be classified as and *become* a *permanent employee as a classroom teacher.* In a district having an average daily attendance of less than 250 pupils, he MAY be so classified. (Ed.C. #44897) (9, 17, 31, 58, 80, 111)

- A *permanent employee not* qualified to render service as a classroom *teacher,* when *advanced to an administrative or supervisory position,* or assigned any special or other type of work, or given special *classification* or designation requiring certification qualifications, SHALL *retain his permanent* classification for the performance of the type of service for which he was qualified prior to such advancement, assignment, or special classification or designation (Ed.C. #44894) (111, 118, 150)

Multiple Qualifications

- If an employee is *authorized* to render service in *more than one type of position* for which certification qualifications are required, either by virtue of his possession of one certification document authorizing service in two or more of such positions, or by virtue of his possession of separate certification documents authorizing service in two or more such position, or any combination thereof,

he SHALL, upon satisfying all other requirements prescribed by law, *acquire permanent status as follows:*

1. If he is *authorized* to render service as a classroom *teacher*, he SHALL acquire permanent status as a classroom teacher.

2. If he is *not authorized* to render service as a classroom *teacher*, he SHALL acquire permanent status below the administrative or supervisory level as a *staff employee* with multiple qualifications. His right to serve in one or more of the positions for which he is qualified to serve SHALL be *subject to the power of assignment* of the school district governing board. (Ed.C. #44894)

- A *permanent employee*, as specified in Section 44894, when *advanced* to an *administrative or supervisory position requiring certification qualifications*, or assigned any special or other type of work requiring certification qualifications, or given special classification or designation requiring certification qualifications, SHALL *retain his permanent classification* as specified in Section 44894. If such person is *advanced* to an *administrative or supervisory position not requiring certification qualifications*, and is assigned any special or other type of work not requiring certification qualifications, or is given special classification or designation not requiring certification qualifications, his *right to retain permanent classification* SHALL be governed by the provisions of Article 3 (commencing with Section 44060) of Chapter 1 of this part. (Ed.C. #44895) (89, 111)

Four-Year Contract

- Notwithstanding the provisions of Section 44897 to the contrary, the *governing board* of any school district SHALL, with respect to each person who is employed in an *administrative or supervisory position requiring certification qualifications* under a contract of employment providing a four-year term of employment and who either has not been previously employed by the district in such position or has been employed in such position but not under such a four-year contract, *determine prior to May 15 of the third year* under such four-year contract of employment *whether to grant or deny* the person *permanent classification* as a classroom teacher. If it grants such classification, the person shall be classified as and become a permanent employee *as a classroom teacher*. (Ed.C. #44898)

- A person *employed* in an *administrative or supervisory position* by *more than one district* SHALL be given *permanent classification* in whichever district he may *select* for the permanent classification. Other permanent classification SHALL be given to such an employee in a district situated wholly or partly within a city or city and county where the charter of the city or city and county provides for other classification. (Ed.C. #44899) (61, 74)

Administrator Transferring to Teaching Position

- For a certificated employee *initially employed in an administrative position* on or after July 1, 1983, who *transfers to a teaching position*, the period of employment in the administrative position SHALL NOT be *included* in *determining seniority* for purposes of #44955 and 44956, except for school site administrators who SHALL earn up to a maximum of three years seniority while serving as site administrators. (Ed.C. #44956.5)

F. Transfer or Demotion

- Whenever a *person employed* in an *administrative or supervisory position requiring certification qualifications* is *transferred* to *teaching position,* the governing board of the school district SHALL give such employee, when requested by him, a *written statement of the reasons* for such transfer. If the reasons include incompetency, an evaluation of the person pursuant to Article 11 (commencing with Section 44660) of Chapter 3 of this code shall have completed not more than 60 days prior to the giving of the notice of the transfer. (Ed.C. #44896) (53, 57)

G. Continuing Contracts

- Every *certificated employee* of a school district of any type or class having an average daily attendance of less than 250, and every certificated employee of any school district in a position requiring a supervision or administration credential, MAY be *offered a continuing contract* to cover a *period longer than one year but not to exceed four years.* (Ed.C. #44883) (31)

H. Annual Reports of Administrators

- The *principal* of each *elementary* school, when *directed by* the city or district *superintendent* of schools, SHALL *submit* an *annual report* to such superintendent or, if no superintendent is employed in the district, to the county superintendent of schools, on forms furnished by the Superintendent of Public Instruction. (Ed.C. #44817)

- The *principal* of each *high school,* when *directed* by the city or district *superintendent* of schools, SHALL *make an annual report* to such superintendent or, if no superintendent is employed in the district, to the county superintendent of schools, on forms furnished by the Superintendent of Public Instruction. (Ed.C. #44818)

- Each city or district *superintendent* of schools SHALL *make an annual report* of the schools under his jurisdiction to the county superintendent of schools which SHALL include an *affidavit* that *all employees* in positions requiring certification qualifications were *properly certificated* for the work performed. (Ed.C. #44819)

XI. Employees' Rights in Reorganization of Special Education Programs

- When local plan for the education of individuals with exceptional needs is developed, the following provisions SHALL apply:

- Whenever any *certificated employee,* who is performing service for one employer, is *terminated, reassigned, transferred,* or becomes an employee of another employer because of the *reorganization of special education programs,* the employee SHALL be *entitled to* the following:

1. The employee SHALL *retain the seniority date* of his or her employment with the district or county office from which he or she was terminated, reassigned, or transferred, in accordance with Section 44847. In the case of *termination,* permanent employees shall *retain the rights* specified in Section 44956, or, in the case of probationary employees, Section 44957 and 44958, *with the district or county office initiating* the termination pursuant to Section 44955.

2. The *reassignment, transfer* or *new employment* caused by the reorganization of special programs by Chapter 797 of the Statutes of 1980 SHALL *not affect the seniority or classification* of certificated employees already attained in any school district which undergoes such reorganization. These employees SHALL have the *same status* with respect to their seniority or classification, *with the new employer,* including time served as probationary employees. The *total* number of *years* served as a *certificated employee* with the former district or county office SHALL be *credited,* year for year, for *placement on the salary scale* of the new district or county office. (Ed.C. #44903.7)

- *All certificated employees* providing service to individuals with exceptional needs SHALL be *employed by a county office of education or an individual school district.* Special education service regions or responsible local agencies resulting from local plans for the education of individuals with exceptional needs formulated in accordance with Part 30 SHALL NOT be considered employers of certificated personnel for purposes of this section (Ed.C. #44903.7)

- Subsequent to any *reassignment* or *transfer* of any certificated employee is as a result of the reorganization of special education programs, that employee SHALL *have priority,* except as provided below, in being informed of and in *filling certificated positions in special education* in the areas in which the employee is certificated within the district or county office by which the certificated employee is then currently employed. This priority SHALL expire 24 months after the date of reassignment or transfer, and MAY be waived by the employee during that time period. (Ed.C. #44903.7)

- A certificated employee who has served as a special education teacher in a district or county office and has been *terminated* from his or her employment by that district or county office pursuant to Section 44955, SHALL have *first priority* in being informed of and in *filling vacant certificated positions in special education* for which the employee is certificated and was employed, in any other county office or school district which provides the same special education programs and services for the pupils previously served by the terminated employee. For a period of *39 months* for *permanent* employees and *24 months* for *probationary* employees from the date of *termination,* the employee SHALL have the first *priority* right to *reappointment* as provided in this section, if the employee has not attained the age of 65 years before reappointment. (Ed.C. #44903.7)

FOOTNOTES

1. *ABC Federation of Teachers v ABC Unified School District (1977)* — Despite E.C. #44923, which says that an extra assignment may be terminated "any time," the district could not discontinue the policy of extra pay for extra duty after the beginning of the school year.

2. *Adelson v United States (1965)* — 342 F2d 332 — Travel expenses during leave of absence for travel and study are not necessarily deductible for federal income tax purposes, as ordinary and necessary business expense, even though such leave must be for the benefit of the schools and pupils.

3. *Adelt v Richmond School District (1967)* — 250 CA2d 149 — Statute governs reinstatement on return from any leave of absence, regardless of the specific reasons for which it was granted. Transfer of teacher to different school and different grade in her school district, on return from leave of absence of one year, was not arbitrary or unreasonable since it was within the legitimate interests of the school district.

   Tenure does not bestow vested right to a specific school or grade, since the school district has the right to assign teachers anywhere their certificates qualify them to teach.

4. *Alford v Department of Education (1970)* — 13 CA3d 884 — Revocation of a teacher's credential was upheld, where there was substantial evidence in the form of medical testimony that the teacher, because of a mental illness — schizophrenia, paranoid type — was unfit to engage in the profession of teaching or in credentialed administrative activities — the duties authorized by the certification she sought to retain.

5. *American Federation of Teachers v Monrovia School District (1977)* — 77 CA3d 100 — Where teacher was hired as full-time teacher to replace more experienced tenured teacher who was assigned to teach in specially funded reading program, she was properly classified as temporary, rather than probationary, employee even though her contract erroneously stated that she was hired under E.C. #44909, relating to specially funded programs, since she didn't claim probationary status until 3 weeks after receiving her termination notice, and two weeks after the date on which the school district was required to give dismissal notices to probationary employees under E.C. #44949.

6. *Axelrod v Board of Education (1940)* — 37 CA3d 623 — Teacher is not entitled to compensation during leave of absence for pregnancy.

7. *Baldwin v Fresno City Unified School District (1954)* — 125 CA2d 44 — Teacher employed as a probationary teacher for 3 consecutive years is not entitled to permanent classification if not reemployed in her former position at any time during the fourth year, though during such year she served as a substitute teacher, taught in the adult education division, and was a part-time teacher in summer session; and after the fourth year was hired again as a probationary teacher.

   Employment in summer school may not be included in computing service for classification as permanent employee.

8. *Balen v Peralta Junior College District (1974)* — 11 C3d 821 — E.C. #44915 and #44919 apply to part-time college instructors, who may attain tenure by teaching in other than regular daytime colleges. Thus, a teacher who was hired as an hourly instructor in college evening programs and continuously rehired in the same position for 4½ years prior to the passage of E.C. 44887, met the requirements for probationary employment.

9. *Barthuli v Board of Trustees (1977)* — 19 C3d 717 — E.C. #44893, providing that a teacher advanced to an administrative or supervisory position retains his permanent classification as a teacher, makes it clear that an associate superintendent's tenure is as a teacher, not as an associate superintendent. His rights to continue in his position are not the same as those of permanent civil service employees, but of permanent teachers.

10. *Barton v Governing Board of Middletown (1976)* — 60 CA3d 476 — The board had to reemploy the plaintiff as vice-principal of a high school for the academic year, where he had been reemployed as a teacher rather than as an administrator, without the school board complying with provision of E.C. #44951, that unless timely and proper notice is given to an employee who is to be discontinued as an administrator, the administrative employee "shall be continued in such position" for the following school year. Notice given, relating to the release of an employee for cause, was not equivalent, and was not sufficient substitute.

11. *Berkeley Teachers Association v Berkeley Federation of Teachers (1967)* — 254 CA2d 660 — A requirement by a public school employer, that a certificated employee who belongs to more than one employee organization designate which organization may count him as a member for purposes of representation on a negotiating council, would amount to an unwarranted interference by an employer with the relationship between the employee organization and its members.

12. *Berry v Coronado Board of Education (1965)* — 238 CA2d 391 — Requirement that teacher on sabbatical leave to obtain advanced degree, submit transcript or record of study, did not violate public policy, as a condition for his being paid for leave time.

13. *Board of Education v Commission on Professional Competence (1976)* — 61 CA3d 664 — The Commission on Professional Competence did not have the right to order that a classroom teacher employed by a county board of education be dismissed under E.C. #44932(e), for "evident unfitness for service," where the board had notified the teacher of the charge on May 29, contrary to the provisions of E.C. #44936, that such notice shall not be given between May 15 and September 15 in any year. The fact that the board had also charged the teacher, at the same time, with immoral conduct under E.C. #44939, and 87735, notice of which may be given at any time, and had immediately suspended him on that charge pursuant to E.C. #44941 and 87737, could not be used to avoid the moratorium provision of #44936 as to the unfitness charge. The provision of E.C. #44946, that an employee suspended pending a hearing shall be reinstated within five days after the governing board's decision in his favor, and shall be paid full salary by the governing board for the period of his suspension, means a decision in his favor on the charge for which he suffered the immediate suspension. The fact that the employee may be dismissed for charges not calling for an immediate suspension at the same time he or she is cleared of the charge on which the suspension was imposed, only overrides the reinstatement clause of the statute and is immaterial to the back salary provision.

14. *Board of Education v Jack M. (1977)* — 19 C3d 691 — Commission of sex offenses does not demonstrate unfitness to teach per se, where the teacher was not tried or convicted of the offense, in view of statutes then in effect which carefully distinguished between persons convicted of listed sex offenses, who were subject to automatic sanctions, and those not convicted who were entitled to a fitness hearing.

15. *Board of Education v Los Angeles County (1973)* — 35 CA3d 490 — Provisions that the school district shall pay to an employee, acquitted of a criminal offense or against whom criminal charges are dismissed, "his full compensation for the period of the compulsory leave of absence upon his return to service in the school district" does not compel a school board to permit a teacher placed on a compulsory leave of absence to return to service on acquittal of the criminal charge if an adverse judgment has been entered against him in an action by the school board under the E.C. section authorizing court determination of whether the board properly charged the teacher with immoral conduct.

16. *Board of Education v Matheus (1957)* — 149 CA2d 265 — School district rule providing that teacher "shall be allowed" specified amount of sick leave did not render inapplicable another rule prohibiting her absence without permission.

17. *Board of Education v Swan (1953)* — 41 C2d 546 — Principals don't acquire tenure as principals, so governing boards may cancel their contracts as principals at any time, subject to a possible judgment in an action at law if the dismissal can't be justified.

18. *Board of Education v Weiland (1960)* — 179 CA2d 808 — E.C. #44938 is not applicable to charges of immoral conduct and dishonesty.

19. *CSEA v Trona Joint Unified School District (1977)* — 70 CA3d 592 — Saturdays and Sundays should not have been counted in determining whether employees of school district should be regarded as classified employees.

20. *California Teachers Association v Board of Trustees (1977)* — 70 CA3d 431 — Certificated personnel may not use "personal necessity" leave whenever they wish and for whatever purpose they deem appropriate without review by the school district, which has the power and duty to review requests for personal necessity leave and to prevent abuses of such leave by certificated personnel, and may adopt rules and regulations prescribing the types of situations in which a personal necessity leave is justified.

21. *California Teachers Association v Governing Board of Mariposa County (1977)* — 70 CA3d 833 — The governing board abused its discretion in refusing to reemploy a teacher who inadvertently failed to give the district timely notice of his intent to remain in the service of the district during the ensuing school year, where substantial evidence showed that the board had become aware of the teacher's intent to remain employed shortly after the last day for such notification, and the board had taken no action to employ another teacher, and so had not been harmed by the delay.

22. *Campbell Elementary Teachers Association v Abbott (1978)* — 76 CA3d 796 — Teachers hired to replace those on leave of absence or on long-term sick leave were properly classified as "temporary" rather than "probationary."

    District may cut services in excess of code-mandated minimums, but the districts may not dismiss an employee under E.C. #44955, while continuing the identical kind of service and position held by the terminated employee.

    Decrease and ADA must be based on average of first six months, not just on sixth month.

23. *Campbell v Graham-Armstrong (1973)* — 9 C3d 482 — Agreement to accept part-time employment as one-session kindergarten teachers did not preclude them from being reclassified as full-time kindergarten teachers entitled to be paid as such.

24. *Centinela Valley Secondary Teachers v Centinela Valley Union High School District (1974)* — 37 CA3d 35 — E.C. #44918 does not apply to a one-year vacancy resulting from several teachers being absent for shorter periods of time. The purpose of the statute was to prevent school boards from hiring substitute teachers to circumvent tenure rights.

25. *Certified Employees Council v Monterey Peninsula Unified School District (1974)* — 42 CA3d 328 — The requirement that public school employers "meet and confer" with teacher organizations applies to the development and adoption of teacher evaluation and assessment guidelines; the establishment of standards of expected student progress; the assessment of certificated personnel competence; the assessment of "other duties" such as salary, hours of extra duty, type of extra duty and place of employment; and the establishment of procedures and techniques for ascertaining that certificated employees are maintaining proper control and preserving a suitable learning environment.

26. *Chambers v Davis (1933)* — 131 CA 500 — In the absence of formal dismissal and written notice, a probationary teacher is deemed reelected from year to year.

27. *Cleveland Board of Education v La Fleur (1974)* — 414 US 632 — Held invalid mandatory leave for pregnant teacher from five months prior to birth until the beginning of the next school semester after the child was three months old; and required notice of preganancy two weeks prior to commencing mandatory leave.

28. *Coffey v San Francisco Community College District (1977)* — 66 CA3d 279 — Community college district cannot avoid reemployment rights of substitute or temporary employees by dividing up contract periods, or by dismissing and rehiring.

29. *Cole v Los Angeles Community College District (1977)* — 68 CA3d 785 — E.C. #44031 did not prevent use of time card records in discharging an employee, without his prior opportunity to review and comment on them. Only entrance in personel file is covered by this code section.

30. *Comings v State Board of Education (1972)* — 23 CA3d 94 — As evidence of "immoral conduct" for revocation of a teacher's credentials following his conviction of possession of marijuana, it was *insufficient* when the records *failed* to reveal what effect the teacher's conduct had on students and other teachers, whether he even taught in a California public school, whether there were extenuating or aggravating circumstances, motive or likelihood of recurrence and, more importantly, the existence of evidence of the teacher's being unfit to teach.

    There was *sufficient* evidence for revocation where the record contained specific evidence, consisting primarily of the school vice-principal's testimony, to the effect that the teacher was unfit for further teaching, and where parents and students were aware of the teacher's conduct through newspaper accounts. To be applicable to a public school teacher, the "immoral" acts must be supported by evidence that his conduct indicates a potential for adverse school relationships in the future, or has achieved such notoriety as to impair those in which he is already involved.

31. *Council of Directors and Supervisors v Los Angeles District (1973)* — 35 CA3d 147 — The word "permanent" relates only to supervisors' and administrators' "permanent" status as classroom teachers and not as "permanent employees." Employees under a "continuing contract" are not permanent employees. They have, at most, a "continuing contract to cover a period longer than one year but not to exceed four years." Warning notices of possible release were not unconstitutionally vague in not informing each recipient whether his or her particular type of service was being reduced or discontinued where the giving of the notices at the start of the school year was required, by board of education rule, to prevent an automatic renewal of the recipients' one-year contracts. The recipients, having no tenure, were not entitled to constitutional due process prior to deprivation of their positions.

32. *Covino v Contra Costa Community College District (1977)* — 76 CA3d 314 — Employment as a full-time temporary teacher for a second year, after one school year as a full-time temporary teacher, qualified a certificated employee to a contract as a probationary employee.

33. *Curtis v San Mateo Junior College District (1972)* — 28 CA3d 161 — Probationary junior college teacher fulfilled the three-year requirement of E.C. #44882 by serving 2½ school years in regular junior college day school and ½ year in evening adult school.

34. *Davis v Gray (1938)* — 29 CA2d 403 — In dismissals for reduction in number of employees, permanent teachers must be retained in preference to probationary teachers.

35. *Degener v Governing Board of Wiseburn (1977)* — 67 CA3d 689 — In determining which teachers were to be retained and which were to be terminated following a decision to discontinue certain positions, and reduce certain programs in the school district under E.C. #44955, the board was not required to consider potential attrition among the ranks of teachers, such as those due to voluntary departures from employment, voluntary retirement, or voluntary leaves of absence; the board, keeping only those teachers whose seniority and certification placed them ahead of those being terminated, properly considered only positively assured attrition, such as mandatory retirements.

36. *Deglow v Board of Trustees (1977)* — 69 CA3d 459 — A probationary, part-time community college teacher did not qualify for permanent employee status under E.C. #44882, where during the three-year probationary period she worked only ⅓ of the time of a full-time teacher. The requirement of E.C. #44919 providing that, if the duties of a temporary certified employee continue beyond the first three school months or beyond four school months for special day and evening classes for adults, the certified employee shall be classified as a probationary employee, apply to part-time employment, and permit a part-time teacher to gain status as a probationary employee.

    E.C. #44887, providing that any person who is employed to teach adult or community college classes for not more than 60% of a full-time assignment shall be classified as a temporary employee and shall not become a probationary employee, does not have retroactive effect and so does not transform a probationary teacher into a temporary teacher.

37. *Di Genova v State Board of Education (1955)* — 45 C2d 255 — Upon revocation of teaching credentials by State Board of Education under E.C. #44425 for conviction of sex offenses, dismissal by local school board follows as a matter of course because the governing board employs in positions requiring credentials only such persons as have credentials. No notice of hearing would be required in such case.

38. *Eastham v Santa Clara Elementary School District (1969)* — 270 CA2d 807 — Teachers and school nurses are "certificated" employees, so both attain permanent status after a three-year probation period.

39. *Evard v Board of Education (1944)* — 64 CA2d 745 — A permanent-tenure teacher who is employed for a specified time, who leaves her position before the expiration of that time without the consent of the school board, is subject of the statutory penalties prescribed therefor: forfeiture of tenure. The question of her good or bad faith, or her unprofessional conduct, was not necessarily involved.

40. *Fair v Fountain Valley School District (1979)* — 90 CA3d 180 — E.C. #44918 does not require that seniority determine the selection of temporary teachers for reappointment as probationary teachers. A school district that failed to advise the employee of a right to a hearing was foreclosed from contending that a discharged probationary employee lost his right to a hearing by failing to request a hearing within a specified period.

41. *Farquar v Board of Education (1979)* — 95 CA3d 761 — Court ordered school district to pay sick leave to two certificated women employees for prior maternity disabilities. They had requested unpaid maternity leave because the district had informed them that paid leave was not available for maternity leave, and then requested payment of earned sick leave on discovering it might be available for their previous maternity disabilities.

42. *Ferner v Harris (1975)* — 45 CA3d 363 — Community college teacher who was not hired under conditions pertaining to temporary employees became a tenured employee upon his reemployment for a fourth school year of full-time employment, and his rights to reemployment under E.C. #44956 were not limited to part-time, even though he was tenured as a part-time teacher.

43. *Flewelling v Board of Trustees of American River Junior College District (1960)* — 178 CA2d 168 — When a teacher is entitled by operation of law to be classified as a permanent employee, failure of the school board to so classify him does not prevent the classification.

    Since division or consolidation of school districts does not affect the classification of certificated employees, a teacher who had taught 3 years in a junior college operated by a high school district and one year in the new junior college district that took over the junior college, had acquired permanent status.

44. *French v Board of Education (1968)* — 265 CA2d 955 — Attempted revocation of resignation was ineffective when not properly delivered to the board before its acceptance of the resignation.

45. *Fresno High School District v Dillon (1939)* — 34 CA2d 636 — Action by school district to dismiss permanent teacher for violation of school board's rule against outside employment.

46. *Fry v Board of Education (1941)* — 17 C2d 753 — Teacher on leave of absence is an employee of the board of education, and so is included in a resolution retaining "the present staff of teachers."

47. *Gassman v Governing Board (1976)* — 18 C3d 137 — Dismissal of probationary employees because of financial difficulties of the school district must not be treated as dismissal for cause, under E.C. #44949d, but as a reduction in number of employees, under E.C. #44955, which protects the employees' rights.

48. *Governing Board of Chaffey v Commission on Professional Competence (1977)* — 72 CA3d 447 — E.C. #44944, providing that decisions be made in accordance with the Administrative Procedure Act, including Government Code #11519, gives the Commission the power to stay a disciplinary order subject to probationary terms and conditions.

49. *Governing Board of Mountain View School District v Metcalf (1974)* — 36 CA3d 546 — A teacher's performance of the act of oral copulation in a doorless toilet stall in a public restroom in a downtown department store during store hours indicates a serious defect of moral character and evinces an unfitness to teach.

50. *Governing Board of Mountain View (L.A.) v Metcalf (1974)* — 111 Cal. Rptr. 724 — Oral copulation in doorless toilet stall showed unfitness to teach.

51. *Governing Board of Oakdale Union High School v Seaman (1972)* — 28 CA3d 77 — Permanent certificated employees of a school district may not be dismissed except for one or more of the causes enumerated in E.C. #44932, and it is the function of the superior court to determine whether such cause exists. A single willful act of disobedience in blatant defiance of lawful school authority which attacks effective school administration is unprofessional, and constitutes grounds for the dismissal of a permanent school employee.

52. *Governing Board of Realto v Mann (1977)* — 18 C3d 819 — Following the enactment of Health and Safety Code, #11361.7, subdivision (b), a part of the new comprehensive scheme to govern the treatment of marijuana offenses and offenders, which prohibited any public entity, including a school district, from revoking any right of an individual on the basis of a pre-1976 possession of marijuana offense so long as two years had elapsed from the date of conviction, a school district lacked statutory authority to dismiss a tenured certificated teacher from his teaching position on the basis of a conviction of marijuana possession after two years had elapsed from the date of conviction, even if former Education Code #13403, subdivision (h), which provides that conviction of a felony or any crime involving moral turpitude, was a cause of dismissal, formerly authorized the teacher's dismissal. Accordingly, a judgment which determined that the marijuana conviction constituted cause for dismissal of the teacher under former Education Code #13403, subdivision (h), required reversal.

53. *Grant v Adams (1977)* — 69 CA3d 127 — E.C. #44938, making a Stull Act Evaluation an express condition to dismissal of a permanent employee, is not a precondition to termination of an administrative assignment.

    The remedy for an inaccurate statement of reasons, under E.C. #44896, for transfer from principal to teacher, was a demand for a new and accurate statement of reason, not reinstatement as principal.

54. *Hagem v Manhattan Beach School District (1978)* — 22 C3d 508 — Duty to supervise conduct of students on school grounds and enforce rules and regulations for students' protection.

55. *Hankla v Governing Board of Roseland (1975)* — 46 CA3d 644 — Under E.C. #44940, the school district has the option of pursuing dismissal proceedings before or after conclusion of the criminal proceedings. "Notice of extension of compulsory leave within 10 days after the

entry of judgment" applies only to judgments of acquittal or dismissal, since there will be no hearing if there is a conviction.

56. *Hart Federation of Teachers v William S. Hart Union High School District (1977)* — 73 CA3d 211 — Teachers hired under special contracts (here, to teach county prisoners), as per E.C. #44909, and not classified by the school district, have the procedural rights of probationary employees, in case of termination. They are excepted from the basic salary provisions of #45028, and so may be paid on an hourly basis rather than an annual salary equal to that paid teachers in regular classes.

57. *Hentschke v Sink (1973)* — 34 CA3d 19 — An administrator accrues no tenure, and may be removed with only a statement of reasons for removal under E.C. #44896.

58. *Holbrook v Board of Education of Palo Alto (1951)* — 37 C2d 316 — If all or some of the duties of a school employee require certification qualifications, he holds a "position requiring such qualifications," within E.C. #44882.

    Employment in the certificated position of principal of an evening high school as well as business manager for 2 years, then director of adult education and business manager the third year, then business manager for ¾ of his time and director of adult education for ¼ time, entitled him to be classified as a permanent full time teacher; but his tenure did not entitle him to continue in his administrative position.

59. *Horner v Board of Trustees of Excelsior Union High School District (1964)* — 61 C2d 79 — Use of the term "dismissal" in referring to notice to a probationary teacher of a decision not to reemploy him indicates that the notice constitutes a dismissal.

60. *Hunt v Alum Rock Union Elementary School District (1970)* — 7CA3d 612 — Conditioning annual salary increment on 75 percent attendance does not defeat the objects of the state's sick leave statutes; only conditions increment on gaining experience required by the district, similar to the 75 percent attendance required each year of probationary teachers as a condition of achieving permanent status. Exception for employees granted military or sabbatical leave, but not for an employee whose absence was caused by illness, is not a denial of Equal Protection.

61. *Jensen v Board of Trustees of Lawndale (1974)* — 43 CA3d 945 — E.C. #44906 does not permit termination of employment of a teacher whose 65th birthday occurs before the time for her actual rendition of paid services, but after the beginning of the school year on July 1. Thus, the teacher must be retained for school year of July 1 - July 30, although she would become 65 years old on September 8, and the fall semester did not start until September 11, since she held permanent status on July 1, the start of the school year, and so was deemed reelected for another year.

62. *Jones v Culver School District (1935)* — 8 CA2d 146 — Notice to teacher of discontinuance of the course of instruction is essential to dismissal.

63. *Kacsur v South Whittier Elementary School District (1941)* — 18 C2d 586 — Home teaching, necessitating the teacher's visiting the home of pupils, entitles the teacher to reimbursement for traveling expenses.

64. *Kalinowski v Board of Education (1979)* — 90 CA3d 245 — Under E.C. #44942, teachers suspended on grounds of mental illness are entitled to payment of their regular salary and all other benefits of employment pending the filing of the psychiatric report with the school district's governing board. Failure to convene a psychiatric examining panel entitled the teacher to back pay.

65. *Kamin v Richmond Unified School District (1977)* — 72 CA3d 1014 E.C. — #44909, concerning status of teachers in categorically funded projects, did not apply to a teacher who was employed as a full-time classroom teacher to conduct a class that was part of the regular

educational program of the school, despite the fact that her contract classified her as a "specially funded project employee." She was entitled to permanent classification after three years.

66. *Kauke v Lindsay Unified School District (1941)* — 46 CA2d 176 — E.C. #44884 requires affirmative action of the school board of a small district to classify a teacher as a permanent employee.

67. *Kerwin v San Mateo County (1960)* — 176 CA2d 304 — Section #44807 does not impose a duty on teacher or school district to supervise pupils on their way home.

68. *Kimberlin v Los Angeles City High School District (1953)* — Under E.C. #44884, in the Los Angeles district, the probationary period is two complete consecutive years, so at the beginning of the third consecutive school year a probationary teacher is entitled to classification as a permanent employee, if reemployed.

69. *King v Berkeley District (1979)* — 89 CA3d 1016 — E.C. #44956 gives school boards discretion in determining the competence of applicants for reemployment.

70. *Klein v Board of Education (1934)* — 1 C2d 706 — A teacher who has acquired tenure may not be dismissed except for cause.

71. *Koons v Placer Union High School District (1976)* — 61 CA3d 484 — E.C. #44949 sets a time limit for decisions not to reemploy probationary teachers.

72. *Kornblum v Newark Unified School District (1974)* — 37 CA3d 623 — Held invalid the mandatory leave for pregnant teacher from three months prior to birth until three months after birth, and requirement of advance notice of pregnancy.

    Said *U.S. Supreme Court* guidelines suggest that it might be permissible for a district to require that a teacher go on maternity leave during the last few weeks of pregnancy.

73. *Lacy v Richmond School District (1975)* — 13 C3d 469 — A counselor assigned to teaching due to funding shortage had no vested right to reemployment as a counselor when that position again became available.

74. *Ladd v Westwood School District (1972)* — 23 CA3d 984 — A letter stating the board's decision not to rehire a teacher over age 65, giving as a basis E.C. #44906, was adequate to terminate her employment.

75. *Lakeside Federation of Teachers v Board of Trustees (1977)* — 68 CA3d 609 — Sections 44977 and 87780 of the Education Code, providing for sick leave for absence of five school months or less, suggest that compensation for a second five-month period is solely within the discretion of the school district.

    The requirement that the amount deducted from the salary not exceed the sum paid a substitute, does not depend on service prior to the absence. Thus, a certificated teacher who was on sick leave the entire first five months of the school year was entitled to an amount to be determined as salary during that period despite the fact that she had not reported to work any day during that five-month period, and so had not accrued any sick leave.

76. *Leithiter v Lancaster School District (1970)* — 12 CA3d 1095 — The statute requiring the governing boards of school districts to accept the resignation of any employee, is presumed to mean precisely what it says; and the statute concerning the nullity of an employee's agreement to waive benefits for certificated employees, does not apply when a teacher resigns.

    A teacher has no vested right to teach in a certain class or a certain school, so the school board can change a permanent teacher's assignments as long as the assignment is equivalent in rank and grade to that by which his permanent status was acquired. The board cannot evade the purpose of the tenure act by assigning a teacher work for which he is not qualified, so as to compel his resignation.

77. *Levy v San Francisco Unified School District (1978)* — 79 CA3d 953 — E.C. #44017, "employees absent from service," includes those temporarily filling another school district position, as well as those on leave of absence. Thus, a school district properly classified a teacher as a substitute rather than as a probationary employee, where she was assigned as a teacher for four months in place of a teacher who had been designated as acting dean.

78. *Livermore Valley District v Feinberg (1974)* — 37 CA3d 920 — A teacher could not be dismissed for unprofessional conduct and unfitness for service where the district had not given him written notice at least 90 days before filing the charges.

79. *Lunderville v Emery School District (1968)* — 262 CA2d 459 — The provision that probationary employees shall be dismissed for cause only, means one of the causes specified for dismissal of permanent teachers, and is to be established at a hearing as in the case of a permanent employee.

80. *Main v Claremont District (1958)* — 161 CA2d 189 — A school superintendent is an employee of the school district, whose employment can be terminated for cause.

81. *Mass v Board of Education (1964)* — 61 C2d 612 — Payment of a suspended employee's "full salary" included retirement benefits and advancement on the salary scale as if she had not been suspended. Though Section 45037 provides that the governing board of a school district "may" pay back salary, the word "may" must be construed as mandatory, to prevent arbitrary action by boards.

82. *Matthews v Board of Education (1962)* — 198 CA2d 748 — No statute requires classification of substitute teachers as probationary. Where teacher's contract classified her as substitute, a finding that she was probationary was error.

83. *McGlone v Mt. Diablo District (1969)* — 3 CA3d 17 — Proof that a probationary teacher was not hired for the welfare of the school district is sufficient cause not to reemploy him.

84. *Middaugh v Board of Trustees of Westside Union High School District (1975)* — 45 CA3d 776 — A teacher has a vested right to permanent status when he meets the requirements of E.C. #44822.

85. *Miller v Chico Unified School District (1979)* — 24 C3d 703 — E.C. #44031 does not prevent use of deragotary material without opportunity for review, in other ways than entering it in the personnel file. Thus, it was properly used in determining to reassign a principal to a teaching position.

    The objective of the Legislature in giving employees the right to comment on derogatory information in their personnel files, and requiring evaluation and assessment of the performance of each certificated employee on a continuing basis, is to protect the individual employee against arbitrary action by the employer, or improper severance. The individual would be helpless against the employer's wrongful reassignment to an inferior position unless he had the opportunity to know and, if possible, to counter the reasons for it.

    Periodic evaluations and notice of unsatisfactory performance are not a precondition to reassignment of a principal to a teaching position.

86. *Morrison v State Board of Education (1969)* — 1 C3d 214 — It was an *error* not to restore the life diploma of a teacher who had admitted to a week's physical but non-criminal homosexual relationship with another teacher three years earlier, since there was no evidence that he had ever considered an improper relationship with any student or anyone else before or since that single incident, or evidence to support any adverse inferences as to his teaching ability and functioning in the classroom. An individual can be removed from the teaching profession only upon a showing that his retention poses a significant danger of harm to students, school employees, or others who might be affected by his actions as a teacher.

    A teacher's actions cannot constitute immoral or unprofessional conduct unless such conduct indicates his unfitness to teach, that is to say, unless such conduct indicates that his future

classroom performance and overall impact on his students are unlikely to meet the board's standards.

The board of eduction may consider such factors as the likelihood that the conduct may have adversely affected students of fellow teachers, the degree of such adversity anticipated, the proximity or remoteness in time of the conduct, the type of teaching certificate held, the extenuating or aggravating circumstances, if any, surrounding the conduct, the likelihood of recurrence of the conduct, and the extent to which disciplinary action may have an adverse impact or chilling effect on the constitutional rights of the teacher involved or other teachers.

87. *Moser v State Board of Education (1972)* — 22 CA3d 988 — Revocation of a teacher's credentials was proper in view of his conviction for having engaged in homosexual behavior in public view in a public place.

88. *Netwig v Huntington Beach District (1975)* — 52 CA3d 529 — The requirement that a suspended employee be reinstated after a decision in his favor did not require that a suspended counselor be reinstated as a counselor rather than as a teacher — the position in which he had earned his tenure.

89. *Otto v Davie (1973)* — 34 CA3d 570 — Counselor with only a "pupil personnel services" credential on file should not have been assigned to a teaching position, but to another available counseling position, when removed from his position as counselor by his principal for "insubordination."

90. *Palos Verdes Faculty Association v Palos Verdes Peninsula District (1978)* — E.C. #45028 requires that, after its effective date, all certificated employees be reclassified according to a uniform allowance for training and experience. Thus, a teacher who prior to reemployment by the district had 1 year's experience in public schools and 5 in an accredited private school, should have been reclassified according to all his prior experience, as required by #45028, but was not entitled to higher salary retroactively for service before the effective date of #45028.

91. *Pasadena District v Commission on Professional Competence (1977)* — 20 C3d 309 — E.C. #44932, enumerating causes for dismissal of permanent employees, applies to dismissal of probationary employees as well.

92. *Paulus v Sequoia Union High School District (1976)* — 64 CA3d 59 — The terms of the employment contract prevail, unless statutes clearly require otherwise. Therefore, the fact that a teacher was assigned to continue in a deceased teacher's former classes for the remainder of the school year did not establish that the teacher was hired to replace the deceased teacher so as to compel her classification as a probationary teacher.

93. *Pennel v'Pond Union School District (1973)* — 29 CA3d 832 — Termination of teachers' contracts is regulated by the education code, not general contract law, so the school board's unilateral termination of a probationary teacher's employment during the school year without following the required statutory procedure was ineffective, and the teacher was entitled to teach for the school year.

94. *Pettit v State Board of Education (1973)* — 10 C3d 29 — A married woman's unfitness to teach in public elementary schools, and also grounds for revoking her elementary school life diploma, were demonstrated by, among other things, expert testimony that she was unfit to teach, and evidence that in the presence of several strangers in the semi-public atmosphere of a club party, she engaged in oral copulation with three men not her husband, and had discussed non-conventional sexual behavior on television programs.

95. *Placerville Union School District v Porini (1968)* — 263 CA2d 784 — Statute permitting a court to require a leave of absence in lieu of dismissal of a school teacher for mental incompetence, and statute providing for reinstatement of teacher at the expiration of the leave (in the absence of his agreement to the contrary) must be interpreted to require such reinstatement unless

affirmative proof of the teachers continued mental disability is produced by the school board, and a court may not "switch" the burden of proof to the teacher.

96. *Purifoy v State Board of Education (1973)* — 30 CA3d 187 — E.C. #44425 was based on compelling state interest in removing teachers convicted of sex offenses from classrooms, and did not deny equal protection by permitting suspension and revocation without administrative hearing although such hearings were accorded teachers charged with non-criminal sexual misconduct.

97. *Rankins v Commission on Professional Competence (1979)* — 24 C3d 167 — A school district unwilling to pay for a teacher's leave for religious purposes as a personal necessity pursuant to Sections 44978 and 44981, must allow a reasonable amount of unpaid leave.

98. *Reed v Board of Education (1932)* — 125 CA 714 — When notice is not given as required by statute, a teacher is deemed re-elected from year to year.

99. *Rible v Hughes (1977)* — 24 C2d 437 — The school board's rules and regulations, in effect at the date of the making or renewal of a teacher's employment contract, are integral parts of the contract.

    A permanent teacher's contract is automatically renewed from year to year on the same terms unless, prior to renewal, the school board changes the terms.

100. *Rodrigues v San Jose U.S.D. (1958)* — 157 CA2d 842 — Section 44807 does not make school districts insurers of safety of pupils at play or elsewhere. Mere lack of supervision may not necessarily create liability on part of school district for injuries sustained by a pupil.

101. *Rutley v Belmont Elementary School District (1973)* — 31 CA3d 702 — Where the teacher's contract classified her as a substitute, since classification as probationary was not compelled by statute, the contract was controlling.

    The teacher's claim that she was entitled to classification as a probationary employee rather than as a substitute, on the ground that she had been employed for the express purpose of filling a vacancy created by the resignation of a permanent teacher, could not be sustained where she was employed, as a substitute, before the permanent teacher's retirement.

102. *Ryan v Burk (1938)* — 25 CA2d 342 — The employer-employee relationship continues while the teacher is on leave of absence, for seniority determination.

103. *Santa Barbara Federation of Teachers v Santa Barbara High School District (1977)* — 76 CA3d 223 — Temporary teachers may claim probationary status if upheld under the E.C. on the facts of the particular teacher's employment, but the statutory requirements must be clearly met before there can be a departure from the terms of the contract.

104. *Sayre v Coalinga College District (1970)* — 9 CA3d 488 — A reasonable classification of school teachers, brought about by policy changes necessitated by employment needs, is permissible.

105. *Sherman v Siskiyou District (1935)* — 9 CA2d 262 — A teacher's resignation was ineffective when made, not to end employment, but to avoid the effect of tenure laws, and based upon the definite promise that the teacher would be reemployed.

106. *Standard Elementary School District v Healey (1938)* — 26 CA2d 172 — In order for compensation to be paid for a one-year leave, it must be clearly shown that the leave was for the express purpose stated in the Education Code.

    Leave requested and granted solely for teacher's convenience was proper under the broad power vested in the school district's board of trustees.

107. *Steinberg v Los Angeles School District (1979)* — 95 CA3d 437 — A teacher employed at an hourly rate to teach adult education an average of 25 hours per week acquired tenure as a full-time hourly rate adult education teacher at 20 hours per week, the number which the district board had determined to be a "full-time assignment."

108. *Stevens v Board of Education (1970)* — 9 CA3d 1017 — A teacher's voluntary activities may not constitute "a personal emergency" as a matter of law. A factual determination is necessary.

109. *Struckman v Tracy Union H.S. (1940)* — 38 CA2d 373 — Dismissal of a teacher during leave of absence for illness is within the authority of the school board, where the teacher had not acquired permanent classification.

110. *Tarquin v Commission on Professional Competence (1978)* — 84 CA3d 251 — Where a teacher was due for a Stull Act evaluation during the school year in which he was given notice of his alleged incompetency, such evaluation was an express precondition to his dismissal on the ground of his incompetency.

The board could not act on the basis of a notice of unsatisfactory service, served *prior* to rather than during the term or half school year preceding the filing of charges of incompetency, as required in E.C. #44938. This deprived him of the opportunity to correct his conduct and prevent his discharge for incompetency. This failure to comply with Section 44938 did not deprive the board of the right to proceed against the teacher on charges of evident unfitness for service and persistent violation of school laws and regulations, under E.C. #44932, each "enumerated cause" of which is sufficient for discharge of a permanent employee.

111. *Thompson v Modesto City High School District (1977)* — 19 C3d 620 — Administrators acquire tenure only as classroom teachers, not as administrators, so can be reassigned from a position as an adminsitrator to one as a classroom teacher.

112. *Thorton v Board of Trustees (1968)* — 262 CA2d 761 — When a teacher reaches the age of 65 he loses his permanent status, and can be rehired from year to year, or not rehired, in the discretion of the school board. The same discretionary standards apply to probationary teachers over 65. No "cause," such as physical or mental impairment, is required as reason not to rehire.

113. *Titus v Lawndale School District (1958)* — 157 CA2d 882 — A district superintendent of schools cannot be regarded as a probationary employee except for the purpose of computing accrual of his right to permanent status as a classroom teacher.

114. *Turner v Board of Trustees (1976)* — 16 C3d 818 — Probationary high school algebra teacher had not vested right to reemployment.

The requirement that probationary employees be dismissed "for cause only" means that the action must not be arbitrary or oppressive.

115. *Vick v Board of Education (1976)* — 61 CA3d 657 — "Cause" for dismissal of probationary teachers need not be limited to behavior during the last school year.

116. *Vittal v Long Beach Unified School District (1970)* — 8 CA3d 112 — When a teacher meets the requirements of E.C. #44882 for permanent status, the attainment of such status is automatic, and requires neither application by the teacher nor affirmative action by the school board.

A teacher who has, for three consecutive eyars, taught more than 75% of the hours of a full-time teacher, but not 75% of the days of a school year, should be entitled to permanent status.

117. *Von Durjais v Board of Trustees (1978)* — 83 CA3d 681 — Payment of back salary following the governing board's decision in her favor on charges authorizing suspension, was required even though the board's decision was against her on other charges showing unfitness for service, but not constituting grounds for suspension.

118. *Whisman v San Francisco Unified School District (1978)* — 86 CA3d 782 — E.C. #44955 does not apply to reassignments, but only to dismissals. Reassignment from supervisory position to elementary school principal after sabbatical leave does not violate E.C. #44973. The position referred to in the code is employment within the scope of the certificate under which tenure was acquired — in this case, a teaching certificate. Since he could have been reassigned had he

not taken the leave, his rights were no greater just because the leave was taken. E.C. #44850.1, providing that on or after July 1, 1978, administrators would not "acquire nor retain permanent status in such position" except as per the code, has retroactive effect, so applies to permanent employees who were presently employed in administrative or supervisory positions, leaving them with tenure only as teachers.

119. *Wisuri v Newark School District (1966)* — 247 CA2d 239 — The notice required by E.C. #44934 need not be as complete as a "complaint" in an action at law, as long as it adequately informs the employee of the charges against him, to enable him to prepare his defense.

120. *26 Ops. Attorney General* — 118 — The same Section 44977 deductions as for sick leave shall be made for leave of absence during pregnancy.

121. *26 Ops. Attorney General* — 275 — Under E.C. #44977, the term "period of five school months" referred to therein is a continuous one, and includes legal holidays.

122. *30 Ops. Attorney General* — 78 — If a teacher takes a sick leave and subsequently severs her employment with the school district before the end of the school year, the district may deduct an amount equivalent to the unearned sick leave from her final check.

123. *30 Ops. Attorney General* — 307 — If the school district hires a substitute teacher at a salary greater than that of the regular teacher absent on sick leave, the regular teacher may not be required to contribute the difference between his salary and that of the substitute.

124. *39 Ops. Attorney General* — 107 — If state has selected a textbook for teaching a language, that book must be used if the language is taught.

125. *44 Ops. Attorney General* — 163 — A conviction following a plea of nolo contendere under Penal Code #1016 should be deemed a conviction within the meaning of E.C. #44425, 44435, 44436, which authorize revocation of a credential only upon conviction of certain specified offenses.

126. *56 Ops. Attorney General* — 6 — School district may not pay moving expenses to newly-employed school district superintendent, though it may pay traveling expenses of applicants for the position.

127. *56 Ops. Attorney General* — 473 — Requirement that advance permission be obtained for leave. Propriety of regulations prescribing proof.

128. *61 Ops. Attorney General* — 303 — School board may reimburse expenses of employee attending local civic organization function where there is a clear connection between such attendance and the performance of the service for which the employee is regularly employed.

School board is not authorized under E.C. #44032 to provide for reimbursement to its employees of the cost of meals purchased for community leaders, including public officials, irrespective of whether such acts are deemed to be in the best interest of the school district.

129. *NOTE:* There is an implication here that if the average daily attendance is less than 200,000, tenure in two districts is permissible.

130. *Dailey v Los Angeles School District (1970)* — 2 C3d 741 — Supervision is required during recess and lunch period.

131. #44902 — repealed — "no rights impaired" — comment Stats 1980, Ch. 1192 #7.

Additional Cases — 1982 Edition

132. *Adler v Los Angeles School District (1979)* — 98 CA3d 280 — Disability pay, as well as workers compensation, was due a probationary teacher who had resigned and had been assaulted and injured by a student in his classroom three days before his resignation became effective.

133. *American Federation of Teachers v Board of Education (1980)* — 107 CA3d 829 — OK for district to fix time when resignation takes effect as the time of its receipt by the superintendent. Therefore, teacher had no right to withdraw resignation after it was accepted by superintendent, but not yet acted upon by governing board.

134. *Board of Education v Commission on Professional Competence (1980)* — 102 CA3d 555 — Test in discharging teacher is whether the person is fit to teach; considering not only conduct, but also likelihood of recurrence, extenuating or aggravating circumstances effect of notoriety and publicity, impairment of teacher-student relationships, disruption of educational process, motive, and proximity in time of the conduct.

135. *Brough v Governing Board (1981)* — CA3d — Upheld reduction in staff based on districts computation, which included employees on leave of absence but not temporary employees. Held that layoffs attributable to a decline in ADA and those prompted by a reduction in a particular kind of service are distinct and not to be commingled, so districts need not use reduction in service layoffs to offset allowable ADA layoffs.

136. *Burgess v Board of Education (1974)* — Normal attrition must be used to offset layoffs made possible by a decline in ADA.

137. *Mayer v Board of Trustees (1980)* — 106 CA3d 476 — OK to define "year of experience," for salary schedule purposes, as one in which the teacher received a satisfactory performance rating; since it applies uniformly to all teachers in the district.

138. *Ocean View Teachers v Board of Trustees (1979)* — 94 CA3d 294 — Different pay scale for "associate teacher" OK under differentiated staffing exemption pursuant to Stats. 1970, Ch. 966, pp. 1734-1735 uncodified.

139. *Waldron v Sulphur Springs District (1979)* — 96 CA3d 503 — Intent of Section 44956 is to give a permanent teacher validly laid off, if she reapplied within 39 months and the emergency causing the layoff had expired, the same employment rights that she would have had if there had been no layoff, but no greater rights.

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140. *Los Angeles Board of Education, Commission on Professional Competence (1982)* — CA — Court reviewed Commission's decision not to dismiss, and, in exercise of its independent judgement, found charges proven and ordered dismissal. Also found teacher's appeal frivolous, so awarded costs on appeal to district. See Ed.C. #44944.

141. *Alba v Los Angeles Unified District (1983)* — 140 CA3d 997 — Failure of probationary teachers to pass a subject competency exam was sufficient cause not to rehire them the following year, where their contracts had required passing the exam before being hired. See Ed.C. #44949.

142. *Bassett Federation of Teachers v Board of Education (1980)* — 112 CA3d 532 — Teachers who accepted half-time employment at a continuation high school, worked half-time and were paid for half-time worked, did not acquire full-time status. See Ed.C. #44924.

143. *Board of Education v Oakland Education Association (1980)* — 112 CA3d 503 — Ed.C. #44963 authorized governing boards to grant leaves of absence for purposes and times other than those authorized or required by the Education Code (i.e., #44978.5 & 44981), so a collective bargaining agreement, allowing certificated employees an additional two days of paid leave for major personal observance beyond the six days maximum authorized by Ed.C. #44981 was valid.

144. *California Teachers Assoc. v Gov. Board of Gustine (1983)* — 45 CA3d 735 — Ed.C. #44977 provision for paying a teacher the difference between his salary and a substitute's when sick

leave is exhausted, for up to five months, means five months in each school year, even if the absence in successive years is due to the same illness or injury.

145. *CTA v Governing Board of Livingston (1983)* — 144 CA3d 27 — The school district had complied with the requirements of #44938 in giving a 90-day notice of charges of incompetency and and opportunity to demonstrate improvement. Failure to adopt uniform objective guidlines for evaluation did not invalidate the termination, since the charges were adequately specific.

146. *Ellerbroek v Saddleback Valley Unified School District (1981)* — 125 CA3d 348 — Ed.C. #44951 requires March 1 notice to a principal to be released, reassigned to the classroom or reassigned to another administrative position. Even if notice had been adequate, changing the principal's contract by reassignment on July 15, which is after the July 1 beginning of the school year, was ineffective.

147. *Hoyme v Board of Education (1980)* — 107 CA3d 449 — Ed.C. #44951 requires notice by registered mail, or signature of the recipient employee. Personal delivery, without obtaining the signature of the employee (a principal) was not sufficient to remove her from her position.

148. *In re G.R.B. (1982)* — 130 CA3d 788 — Ed. Code #44811 does not include a "pupil" as an "other person" who would be guilty of a misdemeanor for threatening to "pop" a teacher. (Ed.C. #44811)

149. *Jefferson Classroom Teachers Assoc. v Jefferson Elementary School District (1982)* — 137 CA3d 993 — Ed.C. #44977 provision for paying a teacher the difference between his salary and a substitute's when sick leave is exhausted, for up to five months, applies even if the illness or injury is not continuous with the illness or injury which caused the teacher to exhaust the regular sick leave.

150. *La Belle v San Francisco (1983)* — 140 CA3d 292 — Ed.C. #44850.1 prohibits a City from giving renewable four-year contracts to school district administrators and supervisors.

151. *Moreland Teachers Assoc. v Kurze (1980)* — 109 CA3d 648 — Ed.C. #44846 has eliminated the lottery system of determining re-employment rights of employees with the same date of initial service. These rights must now be determined solely on the basis of the needs of the district and the student.

    A junior employee can be retained and a senior one terminated if the junior employee can meet needs of the school district which the senior one cannot meet.

    Ed.C. #44955 applies to employees hired prior to 1977, as well as those hired after 1977, ending termination by lottery.

    OK for the initial termination notice to state more than one ground for termination. The purpose of the notice is to give time to find another job.

152. *Noguera v North Monterey Co. Unified School District (1980)* — 106 CA3d 64 — Probationary employees were improperly terminated when unification transferred students from the teachers' district to the unified district which was hiring teachers to staff its new high school but did not offer employment to these probationary employees as required by Ed.C. #35555.

153. *San Dieguito High School District v Commission of Professional Competence (1982)* — 135 CA3d 278 — Under Ed.C. #44932, "evident unfitness to teach," a connection must be shown between the teacher's conduct and its effect on the school. Here, the teacher had many absences because of her own illness and illness of members of her family, but all absences were covered by authorized legitimate leaves — sick leave, personal leave and leave without pay. "Persistent violation of school rules" did not apply either, as only 2 of 16 substitutes had complained of not receiving lesson plans.

    The court must give substantial weight to the factual findings of the Commission on Professional Competence, which had found no cause to dismiss the teacher.

154. *San Francisco District v Superior Court (1981)* — 116 CA3d 231 — Ed.C. #44944 requires the governing board to pay attorney's fees of a teacher who successfully defended against an attempt to discharge him, even though his fees were paid under a CTA group plan. The fees were still "incurred."

Also, a school district employee could be compelled to appear as a witness and testify at his dismissal proceedings. These were not criminal proceedings, so Constitutional protections against self-incrimination were limited to matters that might tend to incriminate the employee.

155. *San Jose Teachers Assoc. v Allen (1983)* — 144 CA3d 627 — There is no statutory requirement that any librarians be employed. A preliminary termination notice stating as cause reduction in particular kinds of services is sufficiently specific if it designates the kinds of services to be reduced or discontinued. It is not necessary to specify numbers of teachers and/or positions terminated. Attrition need not be taken into consideration. See Ed.C. #44955, 44949 and 44868.

156. *Santa Clara Federation of Teachers v Governing Board (1981)* — 116 CA3d 831 — Ed.C. #44846 has replaced the lottery system of determining order of termination among employees with the same initial date of service, with a system of determination based solely on the needs of the district and the students.

Normal attrition and "positively assured" attrition must be taken into account in determining Ed.C. #44955 terminations. Certificated employees working in a school district's children's center are not counted in determining staff to average daily attendance ration, cannot be "bumped" by other certificated employees, and can be laid off without Ed.C. #44955 notice and hearing.

If the notice requirements of Ed.C. #44955 and #44949 are not complied with, the employee is deemed reemployed for the following school year.

157. *Sunnyvale Elementary District v Commission on Professional Competence (1982)* — 102 CA3d 555 — upheld the Commission on Professional Competence's decision to reinstate a teacher dismissed as "unfit to teach" because he had made a false bomb threat. Must consider likelihood of recurrence, notoriety, impairment of teacher-student relationships, disruption of educational process and proximity in time. See Ed.C. #44932.

158. *Taylor v Del Norte School District (1984)* — Cal.3d — The reemployment preference of Ed.C. #44918 applies to Ed.C. #44920 temporary teachers. Preference made Taylor's hiring for a probationary position mandatory if he was qualified to serve by academic preparation or experience.

159. *CSEA v Long Beach Unified School District (1984)* — Cal.App. 3d — Leave of absence for "jury duty" includes Grand Jury service too.

160. *Martin v Kentfield School District (1983)* — Cal.3d — Under Ed.C. #44956 a school district reemploying a laid off teacher may not require any employment qualification which is not required of teachers who continued in service. The only permissible criteria are seniority and being certificated and competent.

161. *Perez v Commission on Professional Competence (1983)* — Cal.App.3d — Court upheld Ed.C. #44932 dismissal for incompetency, finding the 90 day notice (Ed.C. #44938) was sufficient, that there was sufficient evidence of "incompetency" and that "incompetency is not an overly vague or uncertain concept. "Unprofessional conduct," measured by the standard of "fitness to teach," was not supported by the evidence.

162. *Kromnick v School District of Philadelphia (1984)* — F2d — Transferring teachers to other schools to maintain racial integration of school faculties does not violate the Equal Protection Clause of the U.S. Constitution.

163. *Johnston v Trustees of Calif. State University & Colleges (1984)* — CA3d — The court ruled that a probationary employee of a state university or college could be rejected from probation without "cause" (though he could not be rejected for the exercise of a constitutional right).

164. *Consolidated Rail Corp. v Darrone (1984)* — U.S. — The U.S. Supreme court ruled that the Rehabilitation Act of 1973 prohibits an employer who receives Federal funds from discriminating against handicapped employees.

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